

REPORTER'S RECORD
VOLUME 23 OF 59 VOLUMES
TRIAL COURT CAUSE NO. 08CR0333
COURT OF CRIMINAL APPEALS CAUSE NO. AP-78,525

TRAVIS JAMES MULLIS,) IN THE DISTRICT COURT OF
Appellant,)
VS.) GALVESTON COUNTY, TEXAS
THE STATE OF TEXAS,)
Appellee.) 122ND JUDICIAL DISTRICT

FILED IN
COURT OF CRIMINAL APPEALS
OCT 27 2011

GUILT/INNOCENCE PROCEEDINGS

Louise Pearson, Clerk

On the 7th day of March, 2011, the following proceedings
came on to be heard in the above-entitled and numbered
cause before the Honorable John Ellisor, Judge
presiding, held in Galveston, Galveston County, Texas:

Proceedings reported by machine shorthand.

ORIGINAL

- October 12, 2011

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<p style="text-align: right;">6</p> <p>1 MARCH 7, 2011</p> <p>2 (Open court, Defendant present, no jury)</p> <p>3 THE COURT: Thank you. Please be seated.</p> <p>4 Good morning. Welcome to the 122nd</p> <p>5 District Court. It is March the 7th, 2011. We're here</p> <p>6 on Cause No. 08CR0333, The State of Texas versus Travis</p> <p>7 James Mullis.</p> <p>8 Is the State ready to proceed?</p> <p>9 MS. CAMERON: We are, Your Honor.</p> <p>10 THE COURT: Is the Defense ready to</p> <p>11 proceed?</p> <p>12 MR. LOPER: The Defense is ready, Your</p> <p>13 Honor.</p> <p>14 THE COURT: Procedurally what I think</p> <p>15 we'll do is go ahead and take Mr. Mullis' plea to the</p> <p>16 indictment. We will then call in the jury who, by the</p> <p>17 way, are all here now. We'll have them sworn in. I'll</p> <p>18 read instructions to them and then we'll arraign him</p> <p>19 before the jury.</p> <p>20 Does the State have any estimate of how</p> <p>21 long they want to take for their opening statement?</p> <p>22 MS. CAMERON: I would say, Your Honor,</p> <p>23 approximately 15 minutes.</p> <p>24 THE COURT: And is the Defense going to</p> <p>25 want to make an opening statement at this time or do</p>	<p style="text-align: right;">8</p> <p>1 said Court present that Travis James Mullis, on or about</p> <p>2 the 29th day of January, A.D., 2008; and anterior to the</p> <p>3 presentment of this indictment in the County of</p> <p>4 Galveston and the State of Texas, did then and there</p> <p>5 intentionally or knowingly cause the death of an</p> <p>6 individual, namely, Alijah Mullis, by stomping or</p> <p>7 kicking the said Alijah Mullis with the leg or the foot</p> <p>8 of the said Travis James Mullis, and the said Alijah</p> <p>9 Mullis was then and there an individual younger than six</p> <p>10 years of age.</p> <p>11 "Against the peace and dignity of the</p> <p>12 State."</p> <p>13 And signed by the Foreperson of the Grand</p> <p>14 Jury.</p> <p>15 THE COURT: To the charge against you</p> <p>16 alleged in this indictment, what is your plea?</p> <p>17 THE DEFENDANT: Not guilty of capital</p> <p>18 murder.</p> <p>19 THE COURT: Thank you. You may be seated.</p> <p>20 All right. If everybody is ready, we'll</p> <p>21 ask Mr. Kelly to bring out the jury.</p> <p>22 MS. CAMERON: May I approach, Your Honor?</p> <p>23 THE COURT: Yes.</p> <p>24 MS. CAMERON: This is the arraignment,</p> <p>25 felony form.</p>
<p style="text-align: right;">7</p> <p>1 they want to reserve?</p> <p>2 MR. LOPER: We're probably going to follow</p> <p>3 the State immediately.</p> <p>4 THE COURT: So, 15 minutes or less, you</p> <p>5 think?</p> <p>6 MR. LOPER: It would be less than that,</p> <p>7 Judge.</p> <p>8 THE COURT: Okay. Anything else we need</p> <p>9 to talk about before we get started here, Counsel?</p> <p>10 MS. CAMERON: We do have on the record</p> <p>11 that we are abandoning the second paragraph of the</p> <p>12 re-indictment.</p> <p>13 MR. LOPER: So, that won't be read</p> <p>14 obviously before the jury?</p> <p>15 THE COURT: Correct.</p> <p>16 MS. CAMERON: Yes, Your Honor.</p> <p>17 THE COURT: Okay. At this time then if</p> <p>18 someone from the State will come forward and read the</p> <p>19 indictment, we'll take Mr. Mullis' plea.</p> <p>20 MS. CAMERON: Thank you, Your Honor.</p> <p>21 "In the name and by authority of the State</p> <p>22 of Texas: The Grand Jurors for the County of Galveston,</p> <p>23 State aforesaid, duly organized as such at the July</p> <p>24 Term, A.D., 2009, of the District Court of said county,</p> <p>25 122nd Judicial District of Texas, upon their oaths in</p>	<p style="text-align: right;">9</p> <p>1 THE COURT: Thank you very much.</p> <p>2 Does either side want to invoke the Rule</p> <p>3 before opening statement?</p> <p>4 MR. LOPER: We would, Your Honor.</p> <p>5 (Open court, Defendant and jury present)</p> <p>6 THE COURT: Good morning, ladies and</p> <p>7 gentlemen. Please be seated.</p> <p>8 Now that we've got you all seated, I'm</p> <p>9 going to have to ask you to stand and raise your right</p> <p>10 hand. Brandi Maples with the District Clerk's Office</p> <p>11 will administer your oath as jurors.</p> <p>12 (Jury sworn)</p> <p>13 THE COURT: Please be seated. All right.</p> <p>14 For the record, it's March the 7th, 2011, at about</p> <p>15 9:20 a.m. The jury is present as well as the parties.</p> <p>16 At this time, ladies and gentlemen, I'm</p> <p>17 going to read to you the instructions to a criminal</p> <p>18 jury. You may have copies of those if you like to read</p> <p>19 along. You should have a copy to refer to throughout</p> <p>20 the trial.</p> <p>21 Do not mingle with nor talk to the</p> <p>22 lawyers, the witnesses, the parties or any other person</p> <p>23 who might be connected with or interested in this case</p> <p>24 except for casual greetings. They have to follow these</p> <p>25 same instructions and you will understand it when they</p>

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<p style="text-align: right;">10</p> <p>1 do.</p> <p>2 Do not accept from nor give to any of</p> <p>3 those persons any favors, however slight, such as rides,</p> <p>4 food or refreshments.</p> <p>5 Do not discuss anything about this case or</p> <p>6 even mention it to anyone whomsoever, including your</p> <p>7 wife or husband, nor permit anyone to mention it in your</p> <p>8 hearing until you are discharged as jurors or excused</p> <p>9 from this case. If anyone attempts to discuss the case,</p> <p>10 report it to me at once. Do not even discuss this case</p> <p>11 among yourselves until you have heard all the evidence,</p> <p>12 the Court's charge, the attorneys' arguments and until I</p> <p>13 have sent you to the jury room to consider your verdict.</p> <p>14 Do not make any investigation about the</p> <p>15 facts of this case. Occasionally we have a juror who</p> <p>16 privately seeks out information about a case on trial.</p> <p>17 This is improper. All evidence must be presented in</p> <p>18 open court so that each side may question the witnesses</p> <p>19 and make proper objection. This avoids a trial based</p> <p>20 upon secret evidence.</p> <p>21 These rules apply to the jurors the same</p> <p>22 as they apply to the parties and to me. If you know of</p> <p>23 or learn anything about this case except from the</p> <p>24 evidence admitted during the course of this trial, you</p> <p>25 should tell me about it at once.</p>	<p style="text-align: right;">12</p> <p>1 You cannot post anything about whether a</p> <p>2 verdict has or will be reached or when a verdict has or</p> <p>3 will be reached or announced in Court. Do not read or</p> <p>4 send text messages in the courtroom. Do not have cell</p> <p>5 phones, BlackBerries or any other device you may use to</p> <p>6 communicate with others on while you are in the</p> <p>7 courtroom.</p> <p>8 While you're deliberating, your cell</p> <p>9 phones, BlackBerries and any other device used to</p> <p>10 communicate with others will be removed from the jury</p> <p>11 room.</p> <p>12 Do not seek information contained in law</p> <p>13 books, dictionaries, public or private records, the</p> <p>14 internet, television, newspapers, blogs, social media or</p> <p>15 elsewhere which is not admitted into evidence. Do not</p> <p>16 research anything about this case, the parties, the</p> <p>17 attorneys or any subject matter connected with the case.</p> <p>18 All right. The Texas law permits proof of</p> <p>19 any violation of the rules of proper jury conduct. By</p> <p>20 this I mean that jurors and others may be called upon to</p> <p>21 testify in open court about acts of jury misconduct. I</p> <p>22 instruct you, therefore, to follow carefully all</p> <p>23 instructions which I have given you, as well as others</p> <p>24 which you will later receive while this case is on</p> <p>25 trial.</p>
<p style="text-align: right;">11</p> <p>1 You have just taken an oath that you will</p> <p>2 render a verdict on the evidence submitted to you under</p> <p>3 my rulings. Do not make personal inspections,</p> <p>4 observations, investigations or experiments, nor</p> <p>5 personally view premises, things or articles not</p> <p>6 produced in Court. Do not let anyone else do any of</p> <p>7 these things for you.</p> <p>8 Do not tell other jurors your own personal</p> <p>9 experiences or those of other persons nor relate any</p> <p>10 special information. A juror may have special knowledge</p> <p>11 of matters such as business, technical or professional</p> <p>12 matters. Or he or she may have expert knowledge or</p> <p>13 opinions or he or she may know what happened in this or</p> <p>14 some other lawsuit. To tell the jurors any of this</p> <p>15 information is a violation of these instructions.</p> <p>16 All right. Let's flip over to the --</p> <p>17 what's called the addendum to the criminal jury</p> <p>18 instructions and I'll read those to you at this time.</p> <p>19 Do not post or read about the case or</p> <p>20 subject matter of the case or persons in the case on</p> <p>21 blogs, internet news sites or social media including but</p> <p>22 not limited to Wikipedia, MySpace, Twitter or Facebook.</p> <p>23 You can post that you were on jury duty and how long you</p> <p>24 expect to be on jury duty. That is all you're allowed</p> <p>25 to write or text about in relation to your jury service.</p>	<p style="text-align: right;">13</p> <p>1 You may keep these instructions and review</p> <p>2 them as the case proceeds. A violation of these</p> <p>3 instructions should be reported to me.</p> <p>4 Ladies and gentlemen of the jury, any</p> <p>5 questions about the instructions I just read?</p> <p>6 (No response)</p> <p>7 THE COURT: I will ask then for the record</p> <p>8 with the jury present, is the State ready?</p> <p>9 MS. CAMERON: State's ready, Your Honor.</p> <p>10 THE COURT: Is the Defense ready?</p> <p>11 MR. LOPER: Defense is ready, Your Honor.</p> <p>12 THE COURT: Ladies and gentlemen, we're</p> <p>13 going to do a thing now that's called an arraignment.</p> <p>14 Basically that means I'm going to ask the attorney for</p> <p>15 the State to come forward and read the indictment. And</p> <p>16 at that time I'll call for the Defendant's plea.</p> <p>17 Ms. Cameron?</p> <p>18 THE COURT: Thank you, Your Honor.</p> <p>19 "In the name and by authority of the State</p> <p>20 of Texas: The Grand Jurors for the County of Galveston,</p> <p>21 State aforesaid, duly organized as such at the July</p> <p>22 Term, A.D., 2009, of the District Court of said county,</p> <p>23 the 122nd District Court of Texas, upon their oaths in</p> <p>24 said Court present that Travis James Mullis, on or about</p> <p>25 the 29th day of January, A.D., 2008, and anterior to the</p>

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<p style="text-align: right;">14</p> <p>1 presentment of this indictment in the County of</p> <p>2 Galveston and the State of Texas did then and there</p> <p>3 intentionally and knowingly cause the death of an</p> <p>4 individual, namely, Alijah Mullis, by stomping or</p> <p>5 kicking the said Alijah Mullis with the leg or foot of</p> <p>6 the said Travis James Mullis, and the said Alijah Mullis</p> <p>7 was then and there an individual younger than six years</p> <p>8 of age.</p> <p>9 "Against the peace and dignity of the</p> <p>10 State."</p> <p>11 And signed by the Foreperson of the Grand</p> <p>12 Jury.</p> <p>13 THE COURT: Thank you, Ms. Cameron.</p> <p>14 Mr. Mullis, to the offense alleged against</p> <p>15 you in this indictment, i.e., capital murder, what is</p> <p>16 your plea?</p> <p>17 THE DEFENDANT: Not guilty of capital</p> <p>18 murder.</p> <p>19 THE COURT: Thank you. You may be seated.</p> <p>20 All right. Ladies and gentlemen, I'm</p> <p>21 going to read one more set of instructions about how the</p> <p>22 case will go forward. And at that time, we will get</p> <p>23 started.</p> <p>24 This trial will proceed as follows: The</p> <p>25 prosecutor may make an opening statement if they choose.</p>	<p style="text-align: right;">16</p> <p>1 OPENING STATEMENT OF THE STATE</p> <p>2 BY MS. CAMERON:</p> <p>3 May it please the Court, opposing counsel,</p> <p>4 co-counsel. Ladies and gentlemen of the jury, this is</p> <p>5 our opportunity to give you an overview of what we</p> <p>6 anticipate the evidence will show.</p> <p>7 The story starts on January 29th, 2008.</p> <p>8 You will hear from a Mr. Jesse Zaro. Jesse Zaro and his</p> <p>9 wife, Emmy (phn), on January 29th, they had a day off.</p> <p>10 They took their children to school, dropped them off and</p> <p>11 they decided they would do what they had often enjoyed</p> <p>12 doing, which was going down to the far east end of</p> <p>13 Galveston Island to a place called Cherry Hill.</p> <p>14 You will hear from Mr. Zaro that he loved</p> <p>15 to look and watch for the wildlife, especially the</p> <p>16 coyotes, the packs of coyotes that they would see down</p> <p>17 there. So, he and his wife sometime around 9:00 o'clock</p> <p>18 in the morning on January 29th, they're driving along in</p> <p>19 this kind of desolate area. There's not much traffic at</p> <p>20 this time, but it's daylight. They decide to drive up</p> <p>21 on the concrete embankment to get away from any other</p> <p>22 cars that might be traveling that way.</p> <p>23 As they're driving along and trying to</p> <p>24 enjoy their day off, you will hear Mr. Zaro say, "Stop.</p> <p>25 I think I see -- I see something, a baby doll."</p>
<p style="text-align: right;">15</p> <p>1 The Defense may do so as well or may reserve to a later</p> <p>2 time. The prosecutor then will offer evidence through</p> <p>3 witnesses. The Defense may cross-examine each witness</p> <p>4 presented.</p> <p>5 When the prosecutor has finished</p> <p>6 presenting the State's case, the Defense may or may not</p> <p>7 present evidence. As a reminder, the Defendant is never</p> <p>8 required to prove his innocence. The prosecutor may</p> <p>9 cross-examine each Defense witness, if any.</p> <p>10 When the Defense is finished presenting</p> <p>11 its witnesses, the prosecutor may put on rebuttal</p> <p>12 witnesses and the Defense may then do the same.</p> <p>13 At the conclusion of the presentation of</p> <p>14 all the evidence, I will prepare and read to you the</p> <p>15 Court's charge and each side will present closing</p> <p>16 arguments. At that time you will then be permitted to</p> <p>17 retire and deliberate.</p> <p>18 All right. Are there witnesses present</p> <p>19 who may be testifying in this case?</p> <p>20 MS. CAMERON: I don't believe there are,</p> <p>21 Your Honor.</p> <p>22 THE COURT: Okay. At this time then I'll</p> <p>23 recognize the State of Texas for an opening statement.</p> <p>24 MS. CAMERON: Thank you, Your Honor.</p> <p>25</p>	<p style="text-align: right;">17</p> <p>1 He thinks in this area, and you'll hear</p> <p>2 that Cherry Hill, it's fairly desolate. You go all the</p> <p>3 way to the end of the seawall. And at the right, there</p> <p>4 are condominiums on the beach, the Gulf side. And to</p> <p>5 the left is an open field that goes towards the</p> <p>6 harborside. So, he decides because he sees something</p> <p>7 and he knows that there's often discarded trash and</p> <p>8 things that are left behind, he decides to stop his car.</p> <p>9 He gets out of his vehicle with his wife</p> <p>10 there and he says, "Oh, my God. It's a baby. I think</p> <p>11 it's a baby. I can't believe it. The baby's dead."</p> <p>12 The baby looked dead. He was horrified.</p> <p>13 You will hear the 9-1-1 tape that he</p> <p>14 called and talks to EMS and then the Galveston Police</p> <p>15 Department. And you'll hear this grown man crying, so</p> <p>16 upset. "I can't believe it. Who would do this to a</p> <p>17 baby?" And so, his wife, you know, makes certain he</p> <p>18 doesn't touch the baby, he doesn't do anything.</p> <p>19 You will hear that 9-1-1 call. And it's</p> <p>20 chilling. It's traumatizing. You will hear that this</p> <p>21 grown man was left crying there at the scene as he's</p> <p>22 physically observing who we come to know as little</p> <p>23 Alijah Mullis.</p> <p>24 You will hear from an Officer Kershaw with</p> <p>25 the Galveston Police Department who is one of the first</p>

<p style="text-align: right;">18</p> <p>1 officers that makes the scene. And at the time that he 2 gets there, EMS and the Galveston -- the fire 3 department's already been there. The baby is covered 4 with a sheet. But he looks around and he notices that 5 some 20 to 25 feet from the infant is what appears to be 6 a car seat.</p> <p>7 So, he looks around and he -- you know, he 8 knows that this location is desolate. He knows that 9 this location is known to have coyotes. But he waits 10 before he does anything with the baby until the crime 11 scene officer, Scott Pena, comes.</p> <p>12 When Scott Pena comes, they wanted to make 13 certain because the media were coming, people were 14 hearing about an infant being found. So, they lift the 15 sheet in order for them to view the infant that's there. 16 And Officer Kershaw will tell you that when he looked at 17 the infant, he looked like he was about three to six 18 months old. That when he looked at him that he could 19 tell that part of his head was caved in. That he saw on 20 the back of the infant what looked like an imprint or a 21 distinct marking that looked like a rectangular shape. 22 And with the assistance of putting on gloves and helping 23 Scott Pena, what they do is they decide to turn the baby 24 over. The baby's clad only in a diaper. The head with 25 trauma, with the imprint, and at that time he discovered</p>	<p style="text-align: right;">20</p> <p>1 seat. And he'll tell you that after he examined the 2 baby and what looked like a crushed skull or a caved-in 3 skull that he also examined what was around the baby; 4 one blue sock. Then he went to the car seat. He noted 5 that the car seat was Evenflo, that it had a distinct 6 pattern on it. He and his partner, or Annie Almendarez, 7 noted that the baby was in a Blue's Clues diaper from a 8 popular TV show for children that was on the diaper 9 itself.</p> <p>10 At this point the child was soon taken to 11 the Medical Examiner's Office in order for them to do 12 the autopsy. Jeremy Schwartz will tell you he stayed at 13 the scene for some two hours trying to process 14 everything and trying to assist with the investigation. 15 At this point he knew that they had an infant that had 16 basically been discarded with no identifying marks, no 17 way to tell who this child was. So, a decision was made 18 that they would try to get some digital photographs that 19 they would try to somehow get the word out through the 20 media who this child was and what the child looked like. 21 But in order to do that, they would have to create a 22 digital image of the child so that the child's face 23 could be shown to the public not as it was, but as it 24 should be using the digital camera.</p> <p>25 You will next hear that Jeremy Schwartz</p>
<p style="text-align: right;">19</p> <p>1 that it was an infant boy. Nothing to tell them who 2 this child was or who left that child there along with 3 the trash that was around this area.</p> <p>4 So, at this point the next person on the 5 scene is Detective Sergeant Jeremy Schwartz, now a 6 special agent with the FBI. When the call came in, he 7 decided to go to the scene. He, along with another 8 sergeant, an Annie Almendarez, also with the Galveston 9 Police Department assigned to the Juvenile Division, 10 arrive at the scene to look at the child and to cordon 11 off the crime scene to make certain that nothing and 12 nobody interfered with them collecting any kind of 13 evidence that would tell them who committed this 14 horrendous crime and to perhaps identify who that infant 15 was.</p> <p>16 So, decisions were made to make certain 17 that they got statements from anybody who would have any 18 personal knowledge. The Zaros were taken to the 19 Galveston Police Department for statements. And when he 20 looked at the infant, he saw abrasions on the child's 21 face.</p> <p>22 The baby, it looked like he had been 23 flung, thrown approximately 20 to 25 feet from the 24 curbside of the concrete of this embankment. And then 25 some 20 to 25 feet past that, there was an infant car</p>	<p style="text-align: right;">21</p> <p>1 went about his investigation. And next significant 2 thing that occurs is he receives a call from a John 3 Florence who is an investigator with the Medical 4 Examiner's Office. At that time Jeremy Schwartz 5 believes that they've identified a possible mother and a 6 possible name that would go to the child. So, they then 7 go to that location. It's a trailer park in Alvin, 8 Texas. He goes with the intent to try to figure out is 9 this the same child that he observed, that he looked at.</p> <p>10 When he and Annie Almendarez get to that 11 trailer, a trailer that was owned by a Michele Duarte, 12 who you will hear from, also, one of the first things 13 that strikes him as he walks into the trailer is he sees 14 that same Evenflo pattern, that same distinctive 15 stroller, the pattern, the same -- the same one that he 16 had seen out at the scene with that car seat. And so, 17 he's putting two and two together.</p> <p>18 The next thing he sees is he gets 19 permission and he gets consent from both Caren Kohberger 20 who believes she's the mother of the infant and also 21 Michele Duarte. They go through this small trailer.</p> <p>22 You'll hear from Michele Duarte that she 23 had taken the Defendant in periods of time. And that at 24 the time of Alijah Mullis' death, that living in the 25 home was Ms. Duarte; her boyfriend, Mr. Nichols;</p>

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<p style="text-align: right;">22</p> <p>1 Ms. Duarte's four children, two boys, two girls; the</p> <p>2 Defendant, Travis Mullis; Caren Kohberger, the mother of</p> <p>3 Alijah Mullis.</p> <p>4 At that time they don't show her any</p> <p>5 pictures. But what they do is they see from her one of</p> <p>6 the many pictures that she had of her infant son that</p> <p>7 was three months old at the time of his death. And</p> <p>8 Jeremy Schwartz will tell you that when he looked at</p> <p>9 that digital image of her son, Alijah Mullis, that in</p> <p>10 his mind he knew that that was the infant that had been</p> <p>11 left at Cherry Hill at the far end of Galveston Island.</p> <p>12 So, a decision was made to have them come</p> <p>13 and give statements. They both cooperated. They both</p> <p>14 gave videotaped statements. They were interviewed and</p> <p>15 then a photograph was eventually shown, the digital</p> <p>16 reimaging of Alijah Mullis was shown to Caren Kohberger</p> <p>17 and she positively identified him.</p> <p>18 After they gave their statements, there</p> <p>19 was an interview. You'll also hear from Michele Duarte.</p> <p>20 Michele Duarte will say that she met the Defendant</p> <p>21 online maybe in 2005. She knew him online for a couple</p> <p>22 of years. He was living up in Maryland. And at some</p> <p>23 point Michele Duarte agreed to let Travis Mullis come</p> <p>24 down and live with her and her family. He came from</p> <p>25 Maryland sometime around 2006 and lived on and off with</p>	<p style="text-align: right;">24</p> <p>1 Philadelphia Police Department in the Homicide Division</p> <p>2 for years. And based on receiving that information,</p> <p>3 Sergeant Schwartz told Detective Hesser -- this is about</p> <p>4 February 1st, two days later -- he said, "If he's</p> <p>5 willing to talk, talk to him. Give him his Texas</p> <p>6 Miranda warnings. Give him all of his Constitutional</p> <p>7 warnings and see if he will talk to you."</p> <p>8 Sometime later, a few hours later at about</p> <p>9 8:45 that evening, Detective Hesser then faxes to</p> <p>10 Sergeant -- to Detective Schwartz a written statement</p> <p>11 made by the Defendant waiving his rights and stating in</p> <p>12 that written statement that he intentionally, that he</p> <p>13 was upset with the baby, that the baby was crying and</p> <p>14 that he took the baby and stomped on his head three or</p> <p>15 four times until he could tell that his skull had</p> <p>16 collapsed.</p> <p>17 When that information was transferred to</p> <p>18 the local detectives that were working it, they then put</p> <p>19 together an affidavit for an arrest warrant, an arrest</p> <p>20 warrant charging the Defendant with capital murder for</p> <p>21 the intentional and knowing killing of Alijah Mullis, a</p> <p>22 child under the age of six years, then only three months</p> <p>23 old.</p> <p>24 Detective Schwartz then went to a District</p> <p>25 Court Judge, presented the affidavit for the arrest</p>
<p style="text-align: right;">23</p> <p>1 her and her family.</p> <p>2 She'll tell you that at the time of</p> <p>3 Alijah's birth and around the time of Alijah's death</p> <p>4 that the Defendant would get very frustrated anytime the</p> <p>5 baby would cry. It's difficult for him to deal with it.</p> <p>6 She'll tell you that he was unemployed and that he had</p> <p>7 somewhat of a volatile, unstable relationship with the</p> <p>8 baby's mother, Caren Kohberger.</p> <p>9 You'll additionally hear from Jeremy</p> <p>10 Schwartz as he's working the investigation that when he</p> <p>11 gets the information about Alijah Mullis, when he gets</p> <p>12 the name Travis James Mullis, he also finds out that</p> <p>13 Caren Kohberger had a 2002 Hyundai and that that would</p> <p>14 be the vehicle that the Defendant left in.</p> <p>15 So, having this information, it was then</p> <p>16 entered into a national computer so that if any police</p> <p>17 officer, if any agency was able to stop that car, was</p> <p>18 able to locate Travis Mullis, there would be an</p> <p>19 investigative hold so questions could be asked and he</p> <p>20 could be interviewed.</p> <p>21 The next thing that you'll hear about is</p> <p>22 as they're working the case and they're trying to</p> <p>23 determine where is Travis Mullis, you'll hear from</p> <p>24 Detective Schwartz that he received a call from a</p> <p>25 Detective Hesser. Detective Hesser has been with the</p>	<p style="text-align: right;">25</p> <p>1 warrant and the Judge signed it and put a bond on it so</p> <p>2 there was now in the system an arrest warrant for the</p> <p>3 Defendant for capital murder. That was again entered</p> <p>4 into the national system so that it would be pulled up</p> <p>5 and used by the people and the detectives in</p> <p>6 Philadelphia, Pennsylvania.</p> <p>7 You'll also hear from Carolyn Entriiken.</p> <p>8 Carolyn Entriiken is the maternal grandmother of Baby</p> <p>9 Alijah. She will tell you that her daughter, Caren</p> <p>10 Kohberger, had lived -- was born and raised up in New</p> <p>11 Jersey. Lived most of her life up there. Sometime</p> <p>12 around 2006 when she was about 25 years old or 26 years</p> <p>13 old, she was living and working in Connecticut. She'll</p> <p>14 tell you that her daughter was emotionally immature,</p> <p>15 that she hadn't had many boyfriends, that she had low</p> <p>16 self-esteem, that she and her ex-husband had tried to</p> <p>17 provide some financial and emotional support for their</p> <p>18 daughter. But in 2006, Caren Kohberger wanted to come</p> <p>19 to Texas. Ms. Entriiken doesn't know all the details of</p> <p>20 why she was coming or who she was coming to meet. And</p> <p>21 then sometime in May of 2007, Carolyn Entriiken receives</p> <p>22 an e-mail and realizes that Caren Kohberger is pregnant,</p> <p>23 pregnant with Alijah.</p> <p>24 She provided an apartment for them. She</p> <p>25 purchased that 2002 Hyundai. She did what she could to</p>

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<p style="text-align: right;">26</p> <p>1 try to get her daughter stabilized in this new family 2 situation. You'll also hear that this was her first 3 grandchild. So, when the baby was one month old, she 4 came down here. She came down to Houston with her then 5 husband. And she'll tell you that, "When I came here, 6 Alijah was my baby. I picked him up. I held him. I 7 diapered him. I fed him." And that he was a good baby. 8 He wasn't a fussy baby. That you could console him. 9 That he wasn't difficult.</p> <p>10 She'll tell you then is the first time she 11 met the Defendant, Travis Mullis. There weren't any red 12 flags going up other than she knew that Travis Mullis 13 was a young man, that he appeared to be in his early 14 20s, that he talked a lot about himself, but he didn't 15 seem to have a job. But she didn't observe anything 16 that caused her concern. The next thing in her plan is 17 I'm going to come back in three months and see my 18 grandbaby again. But what she'll tell you is that 19 within two months, she finds out that her grandbaby had 20 been murdered.</p> <p>21 At that time, she comes down to plan a 22 memorial, to be here to do what she can for her 23 daughter. And she ends up taking her daughter back to 24 New York where she's briefly hospitalized for issues of 25 depression. She'll also tell you that her daughter</p>	<p style="text-align: right;">28</p> <p>1 Defendant was raised to see whether or not on his trip 2 as he left the infant, as he traveled up to Maryland and 3 eventually ended in Philadelphia, whether or not he had 4 made any admissions or who he had talked to.</p> <p>5 You'll hear from a couple of officers that 6 worked the front of the Philadelphia Police Department, 7 an Officer Munroe and an Officer Smith-Wardlow (sic), 8 and they'll say that the Defendant kind of casually 9 walked up to the entrance of the Philadelphia Police 10 Department and said, "I'm wanted for murder, a 11 kidnapping and auto theft and I'd like to turn myself 12 in."</p> <p>13 Well, they're thinking, you know, there's 14 a young man here and we've got to confirm this. So, 15 they get his identifiers, they get his information, they 16 check it in the computer. And within the computer is 17 that hold for him for his vehicle. They then take him 18 in.</p> <p>19 As he's taken in, he's not asked any 20 questions. And then he volunteers to Officer Munroe, "I 21 stomped his head. I just kept stomping his head."</p> <p>22 At this point they're saying, "We're not 23 trying to interview you. Just wait. Just sit down." 24 They wanted to make sure they didn't violate any of his 25 rights. They contacted Detective Hesser who worked in</p>
<p style="text-align: right;">27</p> <p>1 became the focus of an investigation with the Alvin 2 Police Department in Brazoria County and was charged 3 with child endangerment and is still under indictment 4 and has an attorney for that.</p> <p>5 So when you go back to, you know, what the 6 officers are learning here, you'll learn that Dr. Nobby 7 Mambo, the Medical Examiner, did the autopsy on this 8 little three-month-old child. And what he'll tell you 9 is that that child died from blunt force trauma, that 10 just like an egg shell, the skull shattered. That he'll 11 use a medical term, emacrated, which means his brain 12 was destroyed, that the child maybe died instantly 13 because of the devastating nature of these injuries.</p> <p>14 You'll hear that once they got the signed 15 warrant, Detective Schwartz, from the Judge here, they 16 made plans to immediately go up to Philadelphia, 17 Pennsylvania. And when they got there, you know, they 18 divided up responsibilities. Scott Pena, who is the 19 crime scene investigator, he along with another 20 detective up there, McNamee, they got a search warrant 21 for the vehicle, the 2002 Hyundai. They processed it. 22 They received the evidence from the detective, anything 23 that was relevant.</p> <p>24 Sergeant Schwartz will tell you that he 25 and Annie Almendarez went to Maryland where the</p>	<p style="text-align: right;">29</p> <p>1 Homicide. He came down, took custody of the Defendant.</p> <p>2 The Defendant was then taken up to an 3 interview room. Detective Hesser is thinking, well, 4 I'll just maintain him until our fugitive unit can come 5 and then take him into custody and send him back to 6 Galveston where they're wanting him. So, he puts him in 7 this room and he says -- Detective Hesser tells the 8 Defendant, "Well, I'm going to need your belt, anything 9 sharp. I'm going to need your shoelaces." And he gets 10 the keys. And the Defendant just kind of looks down at 11 his shoes, looks down at the shoelaces.</p> <p>12 Then he tells Detective Hesser, "Suicide's 13 not an issue."</p> <p>14 And then he says, "Well, I'm going to need 15 them any way."</p> <p>16 And he looks down at his shoes again and 17 he says, "Well, these are the shoes that I used to stomp 18 my son's head in with."</p> <p>19 And then he says, "I'm going to need them 20 any way."</p> <p>21 That's when the Defendant kind of matter 22 of factly says to Detective Hesser, "Well, there's not 23 going to be any DNA on my shoes because the body wasn't 24 bleeding when I left it." The body wasn't bleeding when 25 I left it, but they take his shoes. They take the</p>

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<p style="text-align: right;">30</p> <p>1 evidence. And then later they give it back to him to</p> <p>2 give him his level of comfort so he's, you know,</p> <p>3 comfortable when he's being interviewed.</p> <p>4 They did the written interview first.</p> <p>5 Then they got consent to do an oral, a video interview</p> <p>6 of him second. You'll hear from both of those. And</p> <p>7 you'll see the Defendant on the video matter of fact,</p> <p>8 like he's describing a road trip, talking about every</p> <p>9 detail, where he went, where he stopped, where he got</p> <p>10 money, who he was looking for. And then when he's</p> <p>11 talking about his child, what he says is going to be</p> <p>12 telling because he's asked, "Did you know you were going</p> <p>13 to kill your baby?"</p> <p>14 "Yes."</p> <p>15 "Did you intend to kill your baby?"</p> <p>16 "Yes."</p> <p>17 "Why did you just throw your baby?"</p> <p>18 "I wanted to get it as far away from me as</p> <p>19 I could because I knew that it was my link to the crime.</p> <p>20 It scared me."</p> <p>21 You'll also see that there's bruises on</p> <p>22 the child where it looks like the infant was just</p> <p>23 thrown, just tossed into that field. And luckily found</p> <p>24 when that baby was maybe deceased for less than two</p> <p>25 hours.</p>	<p style="text-align: right;">32</p> <p>1 talking about how difficult an objective decision may be</p> <p>2 in this case.</p> <p>3 Opening statements are designed -- excuse</p> <p>4 me. The law allows opening statements to be presented</p> <p>5 to a jury to give the jury an idea of what we think the</p> <p>6 evidence may present to you. Sometimes they evolve into</p> <p>7 a little bit of jury argument, although they're not</p> <p>8 really supposed to. They're supposed to just tell you</p> <p>9 what they think the evidence will show.</p> <p>10 The evidence from the Defense's</p> <p>11 perspective in this case starts a little bit earlier</p> <p>12 than the State's version January 29th of 2008. We think</p> <p>13 the story starts when Travis Mullis and Caren Kohberger</p> <p>14 get together. They get together and are boyfriend and</p> <p>15 girlfriend. They're living together and they are a</p> <p>16 young couple. Unmarried, but they are a couple.</p> <p>17 Caren gets pregnant. And like any young</p> <p>18 couple without any real meaningful support other than</p> <p>19 help from others, but no meaningful support of their own</p> <p>20 and no real job to talk about, they struggle a little</p> <p>21 bit. Struggle a little bit financially. And as you've</p> <p>22 already heard a little bit from the State, they</p> <p>23 struggled a little bit in a relationship type of a way.</p> <p>24 But there they are living in a trailer in</p> <p>25 Alvin, Texas, with another family. Probably very</p>
<p style="text-align: right;">31</p> <p>1 I'm confident that after you hear all of</p> <p>2 the evidence from all of the witnesses that you will be</p> <p>3 convinced beyond a reasonable doubt, beyond all doubt</p> <p>4 that this Defendant on January 29th, 2008, took his</p> <p>5 infant son and stomped him to death and threw him like</p> <p>6 trash into that field. Thank you.</p> <p>7 THE COURT: That concluded the State's</p> <p>8 opening statement.</p> <p>9 Does the Defense desire to make an opening</p> <p>10 statement at this time?</p> <p>11 MR. LOPER: We do, Your Honor.</p> <p>12 THE COURT: You may proceed, Mr. Loper.</p> <p>13 MR. LOPER: Thank you.</p> <p>14 OPENING STATEMENT OF THE DEFENSE</p> <p>15 BY MR. LOPER:</p> <p>16 Good morning. May it please the Court.</p> <p>17 You've just received a not-so-brief</p> <p>18 summary of what the State's evidence may be in this</p> <p>19 case. And I don't think there's any hiding the fact as</p> <p>20 we talked to each and every one of you individually in a</p> <p>21 hypothetical way during jury selection that these were</p> <p>22 not going to be pleasant facts. I think we all but told</p> <p>23 you that. I think you anticipated that. You expected</p> <p>24 that. And there's nothing about these facts that are</p> <p>25 going to be pleasant. And that's why we spent some time</p>	<p style="text-align: right;">33</p> <p>1 cramped. Probably -- a lot of that too many mice in the</p> <p>2 box type attitude probably going on.</p> <p>3 Alijah Mullis is born in the fall of 2007.</p> <p>4 And they're all living in this trailer when on January</p> <p>5 the 29th of 2008 -- and I think the evidence will show</p> <p>6 to you that there's not any particular reason why it was</p> <p>7 January the 29th versus January 28th or January the</p> <p>8 30th -- but on that particular night in the middle of</p> <p>9 the night Travis Mullis and Caren Kohberger are both up</p> <p>10 in the middle of the night. Travis Mullis goes to the</p> <p>11 store. He comes back from the store. He is upset. He</p> <p>12 and Caren are arguing. There's acrimony going on</p> <p>13 between the two of them. The place is probably becoming</p> <p>14 too small for the both of them to stay. And Travis</p> <p>15 Mullis decides that it's a good idea that he should</p> <p>16 leave to get some separation as he says in a statement</p> <p>17 that the State's alluded to on several occasions to try</p> <p>18 to do some thinking, have some time to think.</p> <p>19 So, this is all going on and he's made</p> <p>20 this decision that he should leave. And he doesn't ask</p> <p>21 if he can take Alijah with him. In fact, he's ready to</p> <p>22 leave. But it is Caren Kohberger who insists that he</p> <p>23 take Alijah. Caren knows that he's -- Travis will not</p> <p>24 want to care for Alijah for very long. And after a few</p> <p>25 hours because he won't want to care for Alijah for very</p>

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<p style="text-align: right;">34</p> <p>1 long, that he will bring him back.</p> <p>2 Because you see in the past when Travis</p> <p>3 has left the trailer, he's been gone for a few days.</p> <p>4 Caren Kohberger does not want that to happen again. So,</p> <p>5 she makes it a habit of insisting that when he leaves</p> <p>6 the house no matter the time of the day -- this is</p> <p>7 certainly the oddest time of the day to leave at 3:00 or</p> <p>8 4:00 a.m., he must take the baby with him. So, she</p> <p>9 basically uses her child as a homing beacon to bring</p> <p>10 Travis back again.</p> <p>11 Now, you've heard from the State that when</p> <p>12 Travis leaves with Alijah that morning, that's when the</p> <p>13 worst thing that could happen to Alijah occurred. It</p> <p>14 was because of that. But at 3:00 or 4:00 a.m. in the</p> <p>15 morning at his girlfriend's insistence Baby Alijah is</p> <p>16 taken sleeping and placed in that car seat to ensure</p> <p>17 that Travis returns home again and off he goes.</p> <p>18 He drives to the seawall here in</p> <p>19 Galveston. You've heard a very good description about</p> <p>20 where it was. And he's sitting there trying to decide</p> <p>21 what to do. He's thinking about it. He's probably not</p> <p>22 in a very good state of mind. In fact I would think</p> <p>23 he's probably in the worst state of mind.</p> <p>24 As he's sitting there contemplating this,</p> <p>25 the baby begins to cry as three-month-old babies tend to</p>	<p style="text-align: right;">36</p> <p>1 knowing where he's going really, he finally decides that</p> <p>2 he's gone far enough and he decides to go into the</p> <p>3 Philadelphia police station and tell his side of the</p> <p>4 story.</p> <p>5 He's not -- despite the many good efforts</p> <p>6 of the Galveston Police Department to try to find him,</p> <p>7 he is not captured on a road. He's not arrested upon a</p> <p>8 warrant. He's not brought into the Philadelphia police</p> <p>9 station by Philadelphia police officers. He turns</p> <p>10 himself in.</p> <p>11 I anticipate there will be some evidence</p> <p>12 to show you that before he makes that final decision</p> <p>13 there in the city of Philadelphia that he paces outside</p> <p>14 the police station trying to decide what he should do.</p> <p>15 I submit to you that he's probably deciding whether</p> <p>16 should I go ahead and do this or should I continue on my</p> <p>17 flight, wherever that might take me.</p> <p>18 The bottom line is and the evidence will</p> <p>19 show you that he does eventually walk in and tell them</p> <p>20 that he's wanted. He goes to them and says that. And</p> <p>21 at that point in time I would suspect having decided</p> <p>22 that he's ready to come in and give himself up, so to</p> <p>23 speak, he's ready to talk about what has occurred. He</p> <p>24 was probably also very, very ready to tell his side of</p> <p>25 the story.</p>
<p style="text-align: right;">35</p> <p>1 do. Their diapers are wet. They're hungry. They have</p> <p>2 been awakened from a sleep. Maybe they don't have a</p> <p>3 good sleep pattern, but the baby begins to cry. And</p> <p>4 Travis Mullis does what he knows -- what little he knows</p> <p>5 about trying to comfort the child.</p> <p>6 From all appearances, it obviously does</p> <p>7 not work. Again, you will hear from the statement that</p> <p>8 he reaches a breaking point. And he does what he does</p> <p>9 to stop the baby from crying. It's not pleasant and</p> <p>10 it's not nice.</p> <p>11 And for what he has done, I think the</p> <p>12 evidence will bring you to the conclusion that he should</p> <p>13 be held accountable for it. But there are reasons why</p> <p>14 the evidence shouldn't lead you to find him guilty of</p> <p>15 capital murder. But he does what he does to stop the</p> <p>16 baby from crying.</p> <p>17 And then he realized what he had done. He</p> <p>18 throws the baby to the ground and he leaves. A second</p> <p>19 really bad decision. And he takes off in sort of a</p> <p>20 vague flight across America in a way, an attempt to try</p> <p>21 to find his father not really knowing where to look or</p> <p>22 not really knowing how he's going to get there. And as</p> <p>23 Ms. Cameron has alluded, you'll hear some information</p> <p>24 about some help that he got along the way to get there.</p> <p>25 And after this indirect flight across the country, not</p>	<p style="text-align: right;">37</p> <p>1 My point on that is that I think the</p> <p>2 evidence will show you that he was very primed for an</p> <p>3 interview. You hear the -- in the State's opening about</p> <p>4 the Miranda warnings and how you've got to give a person</p> <p>5 his warnings before he or she gives a statement while</p> <p>6 they're in police custody. And I think you'll find that</p> <p>7 in this particular case because of his demeanor and</p> <p>8 because of the way he surrendered himself, he was very</p> <p>9 ready to give that statement. Almost pliable, if you</p> <p>10 will.</p> <p>11 When he came in, he told one of the first</p> <p>12 officers at the desk, "I kept stomping on his head. I</p> <p>13 kept stomping on his head." And that's very good</p> <p>14 evidence there of exactly what he did and exactly what</p> <p>15 the Medical Examiner in his opinion will be that caused</p> <p>16 the blunt force trauma that caused Alijah Mullis' death.</p> <p>17 And when the first detective from the</p> <p>18 Philadelphia Police Department come in contact with him,</p> <p>19 sat him down, he told him that he was stomping on his</p> <p>20 son's head. Philadelphia officer's going to tell you he</p> <p>21 almost had to stop him. "Wait until we get everything</p> <p>22 in place before we can finally take your statement."</p> <p>23 You will learn that they ultimately do do</p> <p>24 that, that they do give him the warnings. It does</p> <p>25 appear that he waives them. And if you believe that he</p>

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<p style="text-align: right;">38</p> <p>1 did so voluntarily in waiving those rights, you will be</p> <p>2 asked by the Court based upon some written instructions</p> <p>3 given to you that you may consider that statement for</p> <p>4 what you will in making a decision in this case.</p> <p>5 But the reason it's important to talk</p> <p>6 about this and to talk about what the statement says is</p> <p>7 because when it comes time for deliberation, you folks</p> <p>8 are going to be called upon to make the decision about</p> <p>9 whether you should decide what Travis Mullis said or you</p> <p>10 should decide about what Travis Mullis meant when he</p> <p>11 said what he said.</p> <p>12 And going into the police station and</p> <p>13 saying, "I kept stomping my baby's head," he's telling</p> <p>14 the police what he did. He's not telling them what he</p> <p>15 meant to do. In the statement that you hear and the</p> <p>16 State's underlining that for you in their opening, they</p> <p>17 said that he said in response to questions, "Did you</p> <p>18 mean to do this?"</p> <p>19 "Yes."</p> <p>20 "Did you intentionally kill your son?"</p> <p>21 "Yes."</p> <p>22 I don't know because I wasn't there. And</p> <p>23 the important thing because you folks are making a</p> <p>24 decision that you weren't there, but I suspect that what</p> <p>25 occurred from the time that he went into the</p>	<p style="text-align: right;">40</p> <p>1 assure him that he's doing the right thing. And that</p> <p>2 goes along with the idea he was very pliable and very</p> <p>3 amenable to what the police might want him to say in</p> <p>4 this statement.</p> <p>5 The long and the short of it is as the</p> <p>6 police are on the phone with the folks in Galveston, I</p> <p>7 assume the Philadelphia cops don't know all the laws in</p> <p>8 the State of Texas. Some of us lawyers in Texas don't</p> <p>9 know all of the laws in Texas. I suspect they're being</p> <p>10 told about how to give the proper Texas warnings so that</p> <p>11 statement is admissible in a Texas state court. What is</p> <p>12 the offense of capital murder as it relates to the</p> <p>13 killing of a child in the State of Texas? And what does</p> <p>14 it take in order to get the death penalty for a case in</p> <p>15 the State of Texas? And I suspect that they were</p> <p>16 tutored about finding out that you need to show that the</p> <p>17 person --</p> <p>18 MS. CAMERON: Your Honor, I'm going to</p> <p>19 object to any speculation about what was going on and</p> <p>20 any argument in this case.</p> <p>21 THE COURT: Sustained.</p> <p>22 MR. LOPER: The evidence will show you</p> <p>23 that these officers obtained statements from Travis</p> <p>24 Mullis that were identical to the type of statements</p> <p>25 that are necessary for you folks to find the facts in</p>
<p style="text-align: right;">39</p> <p>1 Philadelphia Police Department -- by the way, I'm sorry.</p> <p>2 I didn't really give you some time periods on that. He</p> <p>3 walked into the station at about 1:50 in the afternoon.</p> <p>4 By the time the videotaped statement, which as you now</p> <p>5 know was taken second after the written statement, it's</p> <p>6 almost 11:00 o'clock at night. It's about nine hours</p> <p>7 that the police officers have him.</p> <p>8 Not everything is recorded obviously. Not</p> <p>9 everything is recorded in any type of offense report</p> <p>10 you'll find obviously. I don't know, but I suspect that</p> <p>11 as the police in Philadelphia were on the phone with the</p> <p>12 police and the District Attorneys in Galveston, Texas,</p> <p>13 they were learning a little something about the case</p> <p>14 because, gosh, they've got to be able to ask intelligent</p> <p>15 questions. They've got to learn about where the body</p> <p>16 was found. They've got to learn a little bit about what</p> <p>17 the Galveston Police and District Attorney's Office.</p> <p>18 They've got to learn about the types of warnings that</p> <p>19 you give in Texas so that they can give the right</p> <p>20 warnings and that statement will be admissible.</p> <p>21 They're doing their job and there's</p> <p>22 nothing wrong with that. But when Travis Mullis walked</p> <p>23 into that police station and said as you will hear to</p> <p>24 one of the officers, "Am I doing the right thing," as in</p> <p>25 giving myself up, they assure him, "Sure you are." They</p>	<p style="text-align: right;">41</p> <p>1 this indictment to be true.</p> <p>2 But as you go back, the evidence will</p> <p>3 present to you that he states that he's stomping his</p> <p>4 baby's head to stop him from crying. It is the</p> <p>5 Philadelphia police officers who convince him with the</p> <p>6 logic, well, if you're stomping his head and it caused</p> <p>7 his death, you caused his death. And these two</p> <p>8 Philadelphia officers that you'll hear from which might</p> <p>9 have 50 or 60 years of experience who had this</p> <p>10 21-year-old young man in the state of mind that he's in</p> <p>11 were able to -- you can't really argue and he couldn't</p> <p>12 really argue with their logic that if I did it, I must</p> <p>13 have meant to do it.</p> <p>14 And the reason why that's important is</p> <p>15 this: It is not just hearing him repeating or parroting</p> <p>16 what the Philadelphia officer instructed to ask him to</p> <p>17 say. It's delving behind that and making the difficult</p> <p>18 decision, is that really what he meant? And because of</p> <p>19 that, the evidence will show you, we think, at the</p> <p>20 conclusion of this case when it's all been delivered to</p> <p>21 you that if he meant to stop his child from crying but</p> <p>22 he didn't intentionally cause his death, that that calls</p> <p>23 for a verdict of not guilty of capital murder.</p> <p>24 Now, I'm not saying -- and I said earlier,</p> <p>25 briefly earlier that that doesn't mean that you're not</p>

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<p style="text-align: right;">42</p> <p>1 going to hold him accountable for his actions. But when</p> <p>2 you look at the evidence as it is going to be presented</p> <p>3 to you, the evidence is going to create a reasonable</p> <p>4 doubt in your mind about what he meant to do when he did</p> <p>5 what he did on the seawall. And that will result in you</p> <p>6 folks coming back with a verdict for Travis Mullis of</p> <p>7 not guilty of capital murder. Thank you.</p> <p>8 THE COURT: All right. Ladies and</p> <p>9 gentlemen, we're going to be preparing to start the case</p> <p>10 as far as evidence is concerned. We'll go ahead and</p> <p>11 give you a ten-minute comfort break while we do that.</p> <p>12 So, you will be excused to the jury room and we will</p> <p>13 call you back in in ten or 15 minutes.</p> <p>14 (Break held)</p> <p>15 (Open court, Defendant present, no jury)</p> <p>16 THE COURT: Thank you. Please be seated.</p> <p>17 If you'll bring your witnesses.</p> <p>18 If you'll give your name to the court</p> <p>19 reporter to start with.</p> <p>20 THE WITNESS: Jesse Zaro.</p> <p>21 THE WITNESS: Jeremy Schwartz.</p> <p>22 THE WITNESS: Richard Kershaw.</p> <p>23 THE COURT: Thank you. If you would each</p> <p>24 raise your right hand.</p> <p>25 (Witnesses sworn in)</p>	<p style="text-align: right;">44</p> <p>1 THE COURT: Sir, if you would come here to</p> <p>2 my right and have a seat in the witness box.</p> <p>3 Ladies and gentlemen of the jury, let me</p> <p>4 tell you that this witness along with several others has</p> <p>5 already been sworn. They are under oath to tell the</p> <p>6 truth in this matter.</p> <p>7 Ms. Allen, you may proceed.</p> <p>8 MS. ALLEN: Thank you, Your Honor.</p> <p>9</p> <p>10 JESSE ZARO,</p> <p>11 having first been duly sworn, testified as follows:</p> <p>12 DIRECT EXAMINATION</p> <p>13 BY MS. ALLEN:</p> <p>14 Q. Mr. Zaro, would you introduce yourself to the</p> <p>15 jury?</p> <p>16 A. I'm Jesse Zaro.</p> <p>17 Q. And, Mr. Zaro, where do you live?</p> <p>18 A. I live in League City.</p> <p>19 Q. And are you married?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. And what's your wife's name?</p> <p>22 A. Esmeralda Zaro.</p> <p>23 Q. And do y'all have children?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. And how many children do you have?</p>
<p style="text-align: right;">43</p> <p>1 THE COURT: Thank you. Let me tell you</p> <p>2 that the Witness Exclusion Rule is in effect. Basically</p> <p>3 that means that only one witness can be in the courtroom</p> <p>4 at a time while testifying. When you're outside the</p> <p>5 courtroom, please do not discuss your testimony with</p> <p>6 other witnesses. You are permitted to speak to the</p> <p>7 attorneys. Any questions about the Witness Exclusion</p> <p>8 Rule?</p> <p>9 THE WITNESSES: No, sir.</p> <p>10 THE COURT: If y'all don't mind, wait</p> <p>11 outside until you're called.</p> <p>12 Is the State ready?</p> <p>13 MS. CAMERON: State's ready. And</p> <p>14 Ms. Allen will be calling the first witness which will</p> <p>15 be Mr. Zaro.</p> <p>16 THE COURT: And the Defense, are y'all</p> <p>17 ready to proceed?</p> <p>18 MR. LOPER: Yes, sir.</p> <p>19 THE COURT: Mr. Kelly, bring in the jury,</p> <p>20 please.</p> <p>21 (Open court, Defendant and jury present)</p> <p>22 THE COURT: Ms. Allen, if you'll call your</p> <p>23 first witness.</p> <p>24 MS. ALLEN: The State would call Jesse</p> <p>25 Zaro.</p>	<p style="text-align: right;">45</p> <p>1 A. I have two children.</p> <p>2 Q. And what are their ages?</p> <p>3 A. Seventeen, my son's 17. My daughter is 10.</p> <p>4 Q. And where do they go to school?</p> <p>5 A. They go to school in League City, Clear Creek</p> <p>6 High. My son's in Clear Creek High School and my</p> <p>7 daughter's in Goforth Elementary.</p> <p>8 Q. Let me direct your attention back to January</p> <p>9 29th, 2008. Where did your children go to school on</p> <p>10 that day?</p> <p>11 A. They went to school here on the Island. We</p> <p>12 lived here. My son was at Weis, eighth grade. My</p> <p>13 daughter was second grade in Oppe Elementary.</p> <p>14 Q. And where did you live in Galveston back on</p> <p>15 January 29th, 2008?</p> <p>16 A. I don't know the address. It was Cove View</p> <p>17 Boulevard. It was Lakeside Apartments.</p> <p>18 Q. But you did live in Galveston?</p> <p>19 A. Yes, ma'am, I did.</p> <p>20 Q. Okay. Let's talk about that morning, January</p> <p>21 29th, 2008. Do you remember about what time you woke</p> <p>22 up?</p> <p>23 A. Not really. I don't really remember. I think</p> <p>24 it was like 6:00 o'clock.</p> <p>25 Q. And what is your -- what was your normal</p>

<p style="text-align: right;">46</p> <p>1 routine in the morning?</p> <p>2 A. I'd get up about -- when I worked, it was about</p> <p>3 5:00 a.m.</p> <p>4 Q. And on January 29th, 2008, were you working</p> <p>5 that day?</p> <p>6 A. No. I was off.</p> <p>7 Q. When you were off, what do you do in the</p> <p>8 morning or what did you do that morning?</p> <p>9 A. Well, we get out. We get up, get the kids up</p> <p>10 for school. And I was off on a Tuesday and Wednesday.</p> <p>11 Get the kids ready for school. Take them to school.</p> <p>12 And we'd go out. We'd go places, you know, mostly the</p> <p>13 beaches. The Island is beautiful and we'd just get out</p> <p>14 and go places, you know, just to the beach or whatever.</p> <p>15 Q. What would you do when you were on the beach?</p> <p>16 A. We'd collect -- sometimes collect seashells or</p> <p>17 watch the birds. Just -- it was relaxing. The kids</p> <p>18 were in school. Just go out and see the sites. You</p> <p>19 know, it was beautiful and wildlife and whatever and,</p> <p>20 you know, sometimes we'd watch the ships roll in and</p> <p>21 out. We'd talk, you know, about things.</p> <p>22 Q. Is that -- are those the activities you would</p> <p>23 do with your wife?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. Now, on January 29th, 2008, after you and your</p>	<p style="text-align: right;">48</p> <p>1 morning. And I started heading toward the east end, the</p> <p>2 very east end of it, toward Appfel Park, I believe it's</p> <p>3 called.</p> <p>4 Q. Okay. And did you end up around Cherry Hill?</p> <p>5 A. Yes.</p> <p>6 Q. And describe what that area is like to the</p> <p>7 jury.</p> <p>8 A. The hill itself?</p> <p>9 Q. Yes, that area.</p> <p>10 A. It's just like a levee, a hurricane levee.</p> <p>11 You go up there and just -- it's like a hill that goes</p> <p>12 down. And I believe it was the Army Corps of Engineers</p> <p>13 that own it. It's an isolated area. Really nothing out</p> <p>14 there. Just isolated.</p> <p>15 Q. And on this particular day did you see any type</p> <p>16 of vehicles coming and going?</p> <p>17 A. Well, when we got up on -- I got up on the wall</p> <p>18 up on there because the dump trucks were speeding. So, I</p> <p>19 got up there to get away from that. We got up on the</p> <p>20 levee and that's -- oh, I seen a guy cutting grass up</p> <p>21 there.</p> <p>22 Q. And what was your reason for going to Cherry</p> <p>23 Hill? What were you looking for?</p> <p>24 A. We normally come back that way but -- to escape</p> <p>25 the dump trucks. And there's coyotes up there once in a</p>
<p style="text-align: right;">47</p> <p>1 wife had dropped the children off at school, where did</p> <p>2 y'all go?</p> <p>3 A. We -- after I dropped them off at school, we</p> <p>4 went down riding -- I think it was the seawall. And we</p> <p>5 went to -- down to the piers. We like to watch the</p> <p>6 shrimp boats and hear ships sometimes go in and out of</p> <p>7 there. It's just a walk area. We like to walk. It's</p> <p>8 more of a tourist area. And it was just somewhere to</p> <p>9 go. You know, not a whole lot to do, not a lot of money</p> <p>10 to do anything with. So, we'd always go down there</p> <p>11 sometimes and, you know, we'd just walk and hear the</p> <p>12 birds, talk about things and stuff like that and --</p> <p>13 Q. Did you go anywhere after --</p> <p>14 A. Yes, we did.</p> <p>15 Q. Where did you go?</p> <p>16 A. We got in the car and we went down. We like</p> <p>17 sweets. We stopped at the doughnut shop there on 23rd</p> <p>18 Street and got our doughnuts. So, we started riding</p> <p>19 toward the east end, you know. Got on Broadway and</p> <p>20 headed down toward the east end. And we were just</p> <p>21 talking.</p> <p>22 Q. Okay. And where did you end up?</p> <p>23 A. I got on the seawall heading down that way.</p> <p>24 And there was just -- I don't remember a whole lot. We</p> <p>25 were talking about just some regular routine talk that</p>	<p style="text-align: right;">49</p> <p>1 while. I'm not really sure, but they might have been</p> <p>2 mating. And sometimes we just like to watch them, you</p> <p>3 know. They're very scary animals or whatever, but that</p> <p>4 was just something we like to see. It was something to</p> <p>5 do.</p> <p>6 Q. So, you've been up there before and watched the</p> <p>7 coyotes?</p> <p>8 A. Right.</p> <p>9 Q. Did you see any coyotes this day?</p> <p>10 A. No.</p> <p>11 Q. And about how long would you say you were in</p> <p>12 that area?</p> <p>13 A. We were cruising real slow, you know, and just</p> <p>14 talking. And I saw an oncoming car. My wife was</p> <p>15 telling me about that.</p> <p>16 Q. Okay. Was there anything that you noticed</p> <p>17 about this oncoming vehicle?</p> <p>18 A. It's kind of -- I don't remember too well, but</p> <p>19 they were leaving kind of fast or whatever. And my wife</p> <p>20 was telling me -- and if I remember right she's saying,</p> <p>21 "There's a vehicle coming," or something like that. And</p> <p>22 I kind of like, you know, would turn my head that way to</p> <p>23 look for coyotes and all that. And I was looking at all</p> <p>24 the trash on the ground, too. A lot was going through</p> <p>25 my head, you know, like that guy's going to cut all the</p>

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<p style="text-align: right;">50</p> <p>1 trash up and stuff, you know. Just thinking about</p> <p>2 things, listening to her.</p> <p>3 Q. When you say, "that guy," you're referring to</p> <p>4 that person you saw on the mower?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. That morning while you were out there, did</p> <p>7 something strike you to make you stop your vehicle?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Okay. And what was that?</p> <p>10 A. I was -- I was coming down this levee. And I</p> <p>11 was looking, you know, to my left and I spotted</p> <p>12 something. And it looked like a doll. I came up on it.</p> <p>13 You know, I was driving slow anyway. We were just</p> <p>14 taking our time like I said. I spotted this doll.</p> <p>15 Q. What did you do when you spotted what you felt</p> <p>16 was a doll?</p> <p>17 A. Sometimes I like to pick things up, like</p> <p>18 scavenger hunt, or whatever. You know, just collect</p> <p>19 stuff. I just looked at it and I thought someone</p> <p>20 disregarded one of those expensive kind of dolls. I</p> <p>21 looked at it and I just -- you know, everything just --</p> <p>22 things started popping in my head. I was like, wow, you</p> <p>23 know. What is this, you know?</p> <p>24 Q. Well, did you stop your vehicle?</p> <p>25 A. Well, I was going to pass it. And I slowed</p>	<p style="text-align: right;">52</p> <p>1 Q. And once you saw the baby, did you still feel</p> <p>2 that it was a doll?</p> <p>3 A. As soon as I saw it, it hit my heart. And I</p> <p>4 jumped up. I lost my wind and I turned and ran toward</p> <p>5 the car, you know. I wasn't really sure, but I had to</p> <p>6 be on the safe side as a citizen and be responsible. I</p> <p>7 waved at a passing dump truck, I remember. I just -- I</p> <p>8 forgot we had a cell phone. It was like -- everything</p> <p>9 was going in slow motion.</p> <p>10 MR. LOPER: Objection, nonresponsive.</p> <p>11 THE COURT: Can you ask another question,</p> <p>12 please?</p> <p>13 MS. ALLEN: Yes, Your Honor.</p> <p>14 Q. (BY MS. ALLEN) Did the dump truck stop when</p> <p>15 you tried to wave it down?</p> <p>16 A. No, ma'am.</p> <p>17 Q. At some point did you call 9-1-1?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. From whose cell phone did you call 9-1-1?</p> <p>20 A. It was from my wife's cell phone.</p> <p>21 Q. And when you called 9-1-1, what did you tell</p> <p>22 9-1-1?</p> <p>23 A. I told them that I was out there riding and we</p> <p>24 saw -- we found a doll. I thought it was a doll or a</p> <p>25 baby out there. And that's what I had told them. I</p>
<p style="text-align: right;">51</p> <p>1 down and looked. And I said, "I better take a look at</p> <p>2 this." Something just popped in me. It just didn't</p> <p>3 seem right, you know. I told my wife to stay in the</p> <p>4 car. And I got out of the car and I walked over to it.</p> <p>5 Q. And describe to the jury when you walked over</p> <p>6 to what you felt was a baby doll what you saw.</p> <p>7 A. It looked -- it was laying there. And it hurts</p> <p>8 my heart talking about this. It was -- I walked up to</p> <p>9 it and I was like, oh, God, 3 or 4 feet from it.</p> <p>10 I looked down and something hit my heart. It was like</p> <p>11 all the wind just left me. God, it's the horror. It</p> <p>12 was the horror, man, you know.</p> <p>13 Q. Was the child face up or face down?</p> <p>14 A. It was on its stomach and its head was turned.</p> <p>15 But that's the thing I noticed was its head.</p> <p>16 Q. What did you notice about the baby's head?</p> <p>17 A. It was smashed in or something. It was just</p> <p>18 like caved in.</p> <p>19 Q. Did you see anything on the baby's face?</p> <p>20 A. I don't remember. I think it's like something</p> <p>21 red, too, that I saw, like a dot or something. That's</p> <p>22 all I remember. I don't remember a whole lot now, but</p> <p>23 that's what I do kind of remember.</p> <p>24 Q. And did you ever touch the baby?</p> <p>25 A. No, ma'am.</p>	<p style="text-align: right;">53</p> <p>1 don't remember a whole lot of everything I had told</p> <p>2 them.</p> <p>3 MS. ALLEN: Your Honor, may I approach?</p> <p>4 THE COURT: You may.</p> <p>5 Q. (BY MS. ALLEN) I'm going to show you what's</p> <p>6 been marked as State's Exhibit No. 55. If you will take</p> <p>7 a moment and look at State's Exhibit No. 55.</p> <p>8 A. Okay.</p> <p>9 Q. Do you recognize State's Exhibit No. 55?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. Okay. And does this fairly and accurately</p> <p>12 depict what Cherry Hill, your vehicle and yourself</p> <p>13 looked like on January 29th, 2008?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. Has it been altered or changed in any way?</p> <p>16 A. No, ma'am.</p> <p>17 Q. Let me show you what's been marked as State's</p> <p>18 Exhibit No. 56. Do you recognize State's Exhibit</p> <p>19 No. 56?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. And how do you recognize State's Exhibit</p> <p>22 No. 56?</p> <p>23 A. It has my initials on it and the date.</p> <p>24 Q. And did you review State's Exhibit No. 56</p> <p>25 before coming to Court today?</p>

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<p style="text-align: right;">54</p> <p>1 A. Yes, ma'am.</p> <p>2 Q. And on what date did you review it?</p> <p>3 A. On the date there. On the date that's on the</p> <p>4 CD.</p> <p>5 Q. And could you tell what date it is?</p> <p>6 A. It's January the 25th, 2011.</p> <p>7 Q. Is that an accurate conversation that you and</p> <p>8 your wife had with dispatch on January 29th, 2008?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. Has it been altered or changed in any way?</p> <p>11 A. No, ma'am.</p> <p>12 Q. Did you recognize your wife's voice on the</p> <p>13 9-1-1 call?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. And were you standing beside her when she</p> <p>16 called 9-1-1?</p> <p>17 A. Yes, ma'am.</p> <p>18 MS. ALLEN: I'd like to offer State's</p> <p>19 Exhibit No. 55 and State's Exhibit No. 56.</p> <p>20 MR. LOPER: No objection, Your Honor.</p> <p>21 THE COURT: State's 55 and 56 are</p> <p>22 admitted.</p> <p>23 (State's Exhibit Nos. 55 and 56 admitted)</p> <p>24 MS. ALLEN: May I publish them?</p> <p>25 THE COURT: You may.</p>	<p style="text-align: right;">56</p> <p>1 is, where the -- looks like the sheet is or somewhere</p> <p>2 right in there. Somewhere right in there. Let me point</p> <p>3 it out. I got out of the car here. I came down here,</p> <p>4 somewhere right in here. Then I ran back up this way.</p> <p>5 (State's Exhibit No. 56 played for Jury)</p> <p>6 Q. (BY MS. ALLEN) Now, Mr. Zaro, did you ever</p> <p>7 touch the baby?</p> <p>8 A. No, ma'am.</p> <p>9 Q. Did your wife ever touch the baby?</p> <p>10 A. No, ma'am.</p> <p>11 Q. Did you see the car seat in that area?</p> <p>12 A. I'm not really sure. I'm not really sure.</p> <p>13 Q. And when the police officers got there,</p> <p>14 what -- did you then go somewhere with them?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Where did you go?</p> <p>17 A. They told me to follow them down to the</p> <p>18 station.</p> <p>19 Q. And did you follow them to the station?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. And who went to the station?</p> <p>22 A. Me and my wife.</p> <p>23 Q. And what did you do when you got to the</p> <p>24 station?</p> <p>25 A. We were interviewed.</p>
<p style="text-align: right;">55</p> <p>1 Ladies and gentlemen, let me -- if you've</p> <p>2 figured this out, when the lawyers talk about wanting to</p> <p>3 publish something, that basically means they want to</p> <p>4 show it to you. I'm going to allow that to happen.</p> <p>5 You may proceed.</p> <p>6 MS. ALLEN: Thank you, Your Honor.</p> <p>7 Q. (BY MS. ALLEN) Mr. Zaro, looking at State's</p> <p>8 Exhibit No. 55, could you describe what State's Exhibit</p> <p>9 No. 55 is for the jury?</p> <p>10 A. It's my car. And my wife's standing beside the</p> <p>11 car.</p> <p>12 Q. When you say your car, is that overlooking to</p> <p>13 the right of -- what color is your vehicle?</p> <p>14 A. It's blue.</p> <p>15 Q. What make and model is it?</p> <p>16 A. It was a Mercedes Benz.</p> <p>17 Q. Do you see where you and your wife are?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Okay. And is that where you stopped your</p> <p>20 vehicle when you noticed what you thought was a doll?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Okay. Were you driving the vehicle?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. And when you got out, where did you walk?</p> <p>25 A. When I got out, I walked toward where the area</p>	<p style="text-align: right;">57</p> <p>1 Q. And have you been back to that area?</p> <p>2 A. No, ma'am.</p> <p>3 Q. Why not?</p> <p>4 MR. LOPER: Objection. Immaterial,</p> <p>5 irrelevant.</p> <p>6 THE COURT: Sustained.</p> <p>7 MS. ALLEN: Pass the witness, Your Honor.</p> <p>8 THE COURT: Counsel?</p> <p>9 MR. LOPER: If it please the Court.</p> <p>10 CROSS-EXAMINATION</p> <p>11 BY MR. LOPER:</p> <p>12 Q. Mr. Zaro, how are you doing this morning? Are</p> <p>13 you okay?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Who was the woman's voice that we heard on the</p> <p>16 9-1-1 tape?</p> <p>17 A. My wife.</p> <p>18 Q. All right. And her name is?</p> <p>19 A. Esmeralda Zaro.</p> <p>20 Q. Esmeralda. Okay. Now, you were working in the</p> <p>21 Sheriff's Department at that time as a jailer; is that</p> <p>22 right?</p> <p>23 A. Yes, sir.</p> <p>24 Q. You were living here on the Island?</p> <p>25 A. Yes, ma'am.</p>

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<p style="text-align: right;">58</p> <p>1 Q. Now you're living in League City?</p> <p>2 A. Yes, sir.</p> <p>3 Q. What do you do now?</p> <p>4 A. I'm a truck driver.</p> <p>5 Q. When you were talking about your -- the events</p> <p>6 of that morning, obviously you don't know anyone by the</p> <p>7 name of Caren Kohberger, right?</p> <p>8 A. No, sir.</p> <p>9 Q. That name doesn't mean anything to you. Fair</p> <p>10 statement?</p> <p>11 A. No, sir.</p> <p>12 Q. Okay. And you didn't know Travis James Mullis</p> <p>13 before that day?</p> <p>14 A. No, sir.</p> <p>15 Q. You didn't see a car pull away from that area</p> <p>16 as you came -- was it called Cherry Hill?</p> <p>17 A. Cherry -- that's known -- that's what I've</p> <p>18 always known it to be.</p> <p>19 Q. Okay. Is that a fair statement as well?</p> <p>20 A. I don't understand what you're talking about.</p> <p>21 Q. Well, when you're coming down --</p> <p>22 A. Oh, okay. Yes, sir.</p> <p>23 Q. -- toward Apffel Park?</p> <p>24 A. The only car mentioned was what my wife had</p> <p>25 said.</p>	<p style="text-align: right;">60</p> <p>1 A. That is.</p> <p>2 Q. And I think we saw some yellow tape strung out</p> <p>3 as well?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So, that photograph would have been taken</p> <p>6 clearly after law enforcement arrived?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. And then obviously they've done a little</p> <p>9 bit of work because there was already -- it appears --</p> <p>10 well, I don't know that, but there's a sheet on the</p> <p>11 ground?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Did you see that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Hold it. I'm even messing that up. There's a</p> <p>16 white spot on the ground someplace?</p> <p>17 A. Yes, sir.</p> <p>18 Q. All right. And what was that?</p> <p>19 A. A white sheet.</p> <p>20 Q. Okay. And why -- what was it covering, if</p> <p>21 anything?</p> <p>22 A. There was a baby I found.</p> <p>23 Q. Okay. And did you see in that photograph --</p> <p>24 MR. LOPER: Maybe we can pop that up</p> <p>25 again, if possible?</p>
<p style="text-align: right;">59</p> <p>1 Q. Okay. You didn't really see that car. She</p> <p>2 just said, "There's a car coming" or something?</p> <p>3 A. It was like an SUV. I kind of glanced when it</p> <p>4 passed by.</p> <p>5 Q. Then there was some dump trucks?</p> <p>6 A. It was dump trucks up and down the seawall.</p> <p>7 Q. Is that normal up and down that area since</p> <p>8 you're there that often?</p> <p>9 A. I'm not really sure, sir. They were just going</p> <p>10 up and down that morning and they were hauling dirt from</p> <p>11 somewhere or dumping dirt.</p> <p>12 Q. Okay. I've been warned to talk through this</p> <p>13 microphone. I apologize to you if you were having a</p> <p>14 hard time hearing me.</p> <p>15 When we saw the photograph a few minutes ago,</p> <p>16 I think that's State's Exhibit No. 55, do you recall</p> <p>17 that picture we had up on the screen?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Looked like there was a blue car parked on the</p> <p>20 street. That would have been your car?</p> <p>21 A. Right.</p> <p>22 Q. Your automobile?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Was that you and your wife depicted in the</p> <p>25 photograph?</p>	<p style="text-align: right;">61</p> <p>1 Q. (BY MR. LOPER) Did you see in the</p> <p>2 photograph -- generally speaking, they don't let me</p> <p>3 around the technology.</p> <p>4 So, can you see where it's marked State's</p> <p>5 Exhibit No. 55 --</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did you have a screen up there for you? Can</p> <p>8 you see it on there?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. When -- there's been some discussion of</p> <p>11 there being a car seat or a baby seat or something in</p> <p>12 this area. Do you know -- I think you testified a few</p> <p>13 minutes ago that you don't remember seeing one or</p> <p>14 something?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. Had -- when this photograph is being</p> <p>17 taken, State's Exhibit No. 55, had that car seat already</p> <p>18 been removed from that levee area?</p> <p>19 A. I don't remember, sir. It was there when I</p> <p>20 drove up. It's a while back. It was just so much going</p> <p>21 on that morning.</p> <p>22 Q. It was clearly a stressful situation?</p> <p>23 A. Very scary, sir.</p> <p>24 Q. Okay. Did you see any additional injuries to</p> <p>25 the child like knife marks or anything like that?</p>

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<p style="text-align: right;">62</p> <p>1 A. No, sir.</p> <p>2 Q. Who is -- is this -- who is this standing?</p> <p>3 A. That's me, sir.</p> <p>4 Q. That's you. And these would be Galveston law</p> <p>5 enforcement?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. And this is -- what vehicle is that?</p> <p>8 A. I don't know.</p> <p>9 Q. Did it have any -- did this vehicle that I'm</p> <p>10 circling here which is sort of facing your car but an</p> <p>11 additional, looks like 75 yards down the road, do you</p> <p>12 know if it had any involvement in what we're seeing here</p> <p>13 at the crime scene?</p> <p>14 A. I don't know.</p> <p>15 Q. Okay. When you're talking about the tractor</p> <p>16 that's cutting the grass, where is it in relation to</p> <p>17 this photograph being taken? Is it down by that car or</p> <p>18 is it behind you?</p> <p>19 A. It was back behind me.</p> <p>20 Q. Do you know whether that tractor -- I mean, was</p> <p>21 it one of those tractors that has the Bush Hog on the</p> <p>22 back or under it?</p> <p>23 A. I think it was a -- I don't remember, sir.</p> <p>24 Q. Okay. Did you as you were coming towards the</p> <p>25 Cherry Hill location -- and again, I'm using Cherry</p>	<p style="text-align: right;">64</p> <p>1 like we've got some yellow tape. It looks like they</p> <p>2 roped it off as a crime scene, right?</p> <p>3 A. Yes, sir.</p> <p>4 Q. What I'm really asking is from the time that</p> <p>5 law enforcement arrived up here on Cherry Hill so that</p> <p>6 you can direct them to what you had seen, how long --</p> <p>7 how much longer did you stay at that scene before</p> <p>8 leaving and going back to the station?</p> <p>9 A. Maybe -- I'm not sure, sir. I'm -- maybe 15</p> <p>10 minutes and -- I'm not really sure, sir.</p> <p>11 Q. That's okay. That's okay. That's fine. What</p> <p>12 time of the morning is it, best you can tell us, that</p> <p>13 you get out of your car and see the infant?</p> <p>14 A. I think, sir, it's somewhere close to 9:00.</p> <p>15 Q. Would have been right around 9:00, maybe 8:00?</p> <p>16 A. I'm not really sure, sir.</p> <p>17 Q. Could have been 8:30, 9:00 o'clock, anytime in</p> <p>18 that window?</p> <p>19 A. Probably about close to 9:00 o'clock. It was</p> <p>20 like probably right at 9:00. I'm not really sure. It's</p> <p>21 been a while.</p> <p>22 Q. And then you followed them back to the station.</p> <p>23 And you and your wife have an opportunity to talk about</p> <p>24 what happened?</p> <p>25 A. Right, yes, sir.</p>
<p style="text-align: right;">63</p> <p>1 Hill; is that right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. As you're coming towards this Cherry</p> <p>4 Hill location and you're watching the tractor, do you</p> <p>5 know if the tractor had made a pass through this area?</p> <p>6 A. No, sir. I don't know.</p> <p>7 Q. Okay. We see various debris down here on the</p> <p>8 ground. Do you know whether this debris that we're</p> <p>9 looking at here has anything to do with the incident</p> <p>10 which makes the basis of this indictment, what's</p> <p>11 happening now? Do you know?</p> <p>12 A. No, sir.</p> <p>13 Q. How long did you stay at the scene that's</p> <p>14 depicted here on State's Exhibit No. 55 before you left</p> <p>15 and followed the officers back to the station?</p> <p>16 A. I had just gotten there, sir. I think it was</p> <p>17 probably like 15 minutes, 20 minutes when I got there</p> <p>18 and made the call immediately.</p> <p>19 Q. Okay. And I understand that. But it looks</p> <p>20 like law enforcement came out and it looks like you may</p> <p>21 have given -- talked to them a little bit about what you</p> <p>22 found when they arrived. Fair statement?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. So, you talked to them a little bit</p> <p>25 about what's happened. And they rope it off. Looks</p>	<p style="text-align: right;">65</p> <p>1 Q. You did that. Do you recall giving them a</p> <p>2 written statement about what happened, what you saw and</p> <p>3 what you did?</p> <p>4 A. I don't remember, sir.</p> <p>5 Q. Just verbally talked to them about what</p> <p>6 happened, how you felt about it, those sorts of things?</p> <p>7 A. I do remember talking to them, yes, sir.</p> <p>8 Q. And it's still kind of -- it's still in your</p> <p>9 memory bank today. Fair statement?</p> <p>10 A. Yes, sir.</p> <p>11 Q. It's still kind of tough on you?</p> <p>12 A. It's remembering back that far, yes, sir.</p> <p>13 MR. LOPER: We pass the witness.</p> <p>14 THE COURT: Ms. Allen?</p> <p>15 MS. ALLEN: Nothing further, Your Honor.</p> <p>16 THE COURT: May this witness be excused?</p> <p>17 MS. ALLEN: Yes, Your Honor, from the</p> <p>18 State.</p> <p>19 MR. LOPER: Yes, sir.</p> <p>20 THE COURT: Thank you, Mr. Zaro. You may</p> <p>21 step down.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 THE COURT: Ms. Cameron, who is the</p> <p>24 State's next witness?</p> <p>25 MS. CAMERON: The State would call</p>

<p style="text-align: right;">66</p> <p>1 Sergeant Richard Kershaw.</p> <p>2 THE COURT: If you would please have a</p> <p>3 seat in the witness box.</p> <p>4 You may proceed.</p> <p>5 MS. CAMERON: Thank you, Your Honor.</p> <p>6</p> <p>7 RICHARD KERSHAW,</p> <p>8 having first been duly sworn, testified as follows:</p> <p>9 DIRECT EXAMINATION</p> <p>10 BY MS. CAMERON:</p> <p>11 Q. Please introduce yourself to the ladies and</p> <p>12 gentlemen of the jury.</p> <p>13 A. My name is Richard Kershaw.</p> <p>14 Q. And how are you employed?</p> <p>15 A. I'm employed with The State of Texas Attorney</p> <p>16 General's Office presently.</p> <p>17 Q. And what are your duties in your position there</p> <p>18 with the Attorney General's Office?</p> <p>19 A. I'm a fraud investigator. I do Medicaid fraud,</p> <p>20 drug diversions and elderly abuse cases.</p> <p>21 Q. Now, can you give them the benefit of your</p> <p>22 background in law enforcement?</p> <p>23 A. Yeah. Back in the early Eighties I was with</p> <p>24 the Sheriff's Department for a while. Did some</p> <p>25 investigation work there. Galveston Police Department</p>	<p style="text-align: right;">68</p> <p>1 A. I notified my lieutenant who was standing next</p> <p>2 to me that I was going to the scene.</p> <p>3 Q. And how long did it take you approximately to</p> <p>4 get from the Galveston Police Department to the scene?</p> <p>5 A. Ten, 15 minutes maybe. Fifteen minutes</p> <p>6 probably.</p> <p>7 Q. Were you by yourself at that time?</p> <p>8 A. Yes, I was.</p> <p>9 Q. So, approximately what time did you get to the</p> <p>10 crime scene location?</p> <p>11 A. Probably just a few minutes after 9:00 a.m.</p> <p>12 Q. What was to be your responsibility once you got</p> <p>13 to the crime scene?</p> <p>14 A. Actually as a patrol supervisor to assist our</p> <p>15 identification division or they call it CSI in some</p> <p>16 places are in charge of the scene. We were just there</p> <p>17 to assist.</p> <p>18 Q. When you arrived there, do you know whether or</p> <p>19 not the EMS or the fire department were still there at</p> <p>20 that time?</p> <p>21 A. I don't believe they were. No, I don't believe</p> <p>22 so.</p> <p>23 Q. Do you recall who was there when you arrived?</p> <p>24 A. Yes. There was -- one of our detectives was</p> <p>25 there.</p>
<p style="text-align: right;">67</p> <p>1 for 21 years. Retired from there.</p> <p>2 Q. All right. Let me direct your attention back</p> <p>3 to January, January 29th, 2008. What was the position</p> <p>4 assignment that you held at the Galveston Police</p> <p>5 Department at that time?</p> <p>6 A. I was a patrol supervisor at that time.</p> <p>7 Q. And what were your responsibilities as a patrol</p> <p>8 supervisor?</p> <p>9 A. Supervised patrol officers in certain</p> <p>10 districts. Do lineup, things like that.</p> <p>11 Q. Did you have a particular district within</p> <p>12 Galveston Island at that time?</p> <p>13 A. Yes. It changed. Depending on the day and who</p> <p>14 did lineup, we changed, yes.</p> <p>15 Q. All right. I want to direct your attention to</p> <p>16 around 9:00 o'clock in the morning. Did you receive any</p> <p>17 information regarding a possible crime scene at the far</p> <p>18 east end of the Island?</p> <p>19 A. Yes, I did.</p> <p>20 Q. And how did you first become aware of it?</p> <p>21 A. I heard it on the radio, on my police radio.</p> <p>22 Q. And where were you at that time?</p> <p>23 A. I was at the police station.</p> <p>24 Q. What, if any, action did you take after hearing</p> <p>25 that?</p>	<p style="text-align: right;">69</p> <p>1 Q. Do you recall which detective that would be?</p> <p>2 A. Yeah. Sergeant Schwartz.</p> <p>3 Q. And do you know what his responsibility was to</p> <p>4 be at the crime scene?</p> <p>5 A. At first, I didn't. I did afterwards. But</p> <p>6 when I first pulled up, he was actually rolling out</p> <p>7 crime scene tape around the area. I assisted with that.</p> <p>8 Q. Were there any other officers there? Do you</p> <p>9 recall?</p> <p>10 A. Yes. There were a couple of patrol officers</p> <p>11 there and then the crime scene investigators were there.</p> <p>12 Q. So, would that be Officer Pena?</p> <p>13 A. Yes, it was. Scott Pena was there.</p> <p>14 Q. And also Officer Jones?</p> <p>15 A. I don't think he was there when I showed up,</p> <p>16 no. I think he hadn't gotten there yet.</p> <p>17 Q. So, what action did you take when you arrived</p> <p>18 and you saw Sergeant Schwartz putting out the crime</p> <p>19 scene tape?</p> <p>20 A. I assisted with that because it was a fairly</p> <p>21 big area. I assisted with pulling the tape and tying it</p> <p>22 off to the cars and posts and things we had to tie the</p> <p>23 tape off to to secure the area.</p> <p>24 Q. Now, are you personally familiar with this area</p> <p>25 of town?</p>

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<p style="text-align: right;">70</p> <p>1 A. Yes, I am.</p> <p>2 Q. And had you been there for crime scenes before,</p> <p>3 if you recall?</p> <p>4 A. Yes.</p> <p>5 Q. And are you aware of whether or not there's</p> <p>6 actually coyotes that go in that field location at that</p> <p>7 Cherry Hill spot?</p> <p>8 A. Yes. I worked nights before this before I was</p> <p>9 a detective but before that particular duty as a patrol</p> <p>10 supervisor. I was a supervisor on nights at one time</p> <p>11 and they're all over that area out there. Especially at</p> <p>12 night, you see them all over the place.</p> <p>13 Q. So, when you got to the scene, and I think you</p> <p>14 said you assisted with the crime scene tape, what other</p> <p>15 actions did you take?</p> <p>16 A. I remained outside the tape until Officer Pena</p> <p>17 asked me to step inside and assist him, which I did so.</p> <p>18 He was trying to take the sheet off the victim and he</p> <p>19 needed some assistance. So, he asked me to step inside</p> <p>20 the tape and help him.</p> <p>21 Q. And did you actually observe the infant?</p> <p>22 A. Yes. Yes, I did.</p> <p>23 Q. And can you describe the infant that you</p> <p>24 observed when you removed the sheet?</p> <p>25 A. Very small child, infant, face down. All he</p>	<p style="text-align: right;">72</p> <p>1 Q. Did you actually touch or do anything to see</p> <p>2 for yourself whether or not any rigor mortis had set in?</p> <p>3 A. Yes, I did.</p> <p>4 Q. And by "rigor mortis," would you explain to the</p> <p>5 jury what we're talking about?</p> <p>6 A. Rigor mortis sets in after death on everyone,</p> <p>7 no matter how old. And it's a certain length of time it</p> <p>8 sets in. And it's stiffening of the muscles and the</p> <p>9 extremities. And certain lengths of time it does it. I</p> <p>10 was a detective for a long time. So, I knew about the</p> <p>11 rigor, what it did.</p> <p>12 Q. Did you put on gloves before you had any</p> <p>13 contact with the infant?</p> <p>14 A. Yes. What had happened was Officer Pena had</p> <p>15 checked the infant, had actually felt the infant with --</p> <p>16 he had gloves on. And he made a comment as to possible</p> <p>17 extremities being slightly different temperature. And</p> <p>18 he asked me if I would check. So, I asked him to hand</p> <p>19 me a set of gloves out of his bag that he had there.</p> <p>20 I put gloves on and examined the infant. I</p> <p>21 felt the torso and then the extremities, the feet and</p> <p>22 the hands, and told him that he was correct, that I felt</p> <p>23 that the torso was slightly warmer, not that the infant</p> <p>24 was warm, but they were slightly warmer temperature than</p> <p>25 the extremities.</p>
<p style="text-align: right;">71</p> <p>1 had on was a diaper at the time. Face down, head</p> <p>2 pointing up towards the seawall itself, facing to the</p> <p>3 south.</p> <p>4 Q. With his head being face down, were you able to</p> <p>5 observe any type of trauma to the infant?</p> <p>6 A. Not at that time, no, ma'am.</p> <p>7 Q. And what was the next thing that you-all did?</p> <p>8 A. First I assisted holding the sheet up, which</p> <p>9 were blocking for any spectators or media or anything,</p> <p>10 holding the sheet up so Officer Pena could examine the</p> <p>11 body. I was holding one corner. Officer Blackwell was</p> <p>12 there, too. He was holding the other corner. He had</p> <p>13 showed up sometime, too. He might have been there</p> <p>14 before I got there.</p> <p>15 Q. At any time did you offer any kind of</p> <p>16 assistance as far as checking the infant in any way?</p> <p>17 A. Yes, I did.</p> <p>18 Q. Can you tell us how you went about doing this?</p> <p>19 A. Officer Pena had checked the infant. And all</p> <p>20 of his photos, I guess, were done before that because he</p> <p>21 was actually there at that point to check the infant.</p> <p>22 When he'd asked me, he rolled the infant over on its</p> <p>23 back and then checked the extremities and made a comment</p> <p>24 to me that he didn't think rigor mortis had set in at</p> <p>25 that time.</p>	<p style="text-align: right;">73</p> <p>1 Q. Did you at any time check anything else as it</p> <p>2 related to the infant?</p> <p>3 A. Yes, I did.</p> <p>4 Q. Can you tell the jury what it is that you</p> <p>5 checked?</p> <p>6 A. After I had checked for the heat differences, I</p> <p>7 put my thumb on the infant's jaw and wiggled it because</p> <p>8 rigor mortis sets in the jaw normally first of all.</p> <p>9 That's where it sets. And I put my thumb on the</p> <p>10 infant's jaw and wiggled it a little bit and saw that</p> <p>11 there was not rigor in his jaw. And I was -- as I was</p> <p>12 doing that, I had the opportunity to look in the</p> <p>13 infant's mouth. And I didn't see any obstructions or</p> <p>14 any teeth at that time. And I made those comments to</p> <p>15 Officer Pena as I was doing that.</p> <p>16 Q. Now, are you actually putting your hand or your</p> <p>17 gloved hand inside the infant's mouth or are you just</p> <p>18 doing this from the outside manipulation?</p> <p>19 A. No. Never touched the infant inside the mouth.</p> <p>20 I simply had my thumb on the jaw or on the chin, pushing</p> <p>21 it down and looking inside. I never put anything inside</p> <p>22 the infant's mouth.</p> <p>23 Q. Were you able to determine whether or not this</p> <p>24 was a male or a female infant?</p> <p>25 A. Yes. I had asked him was he aware of the</p>

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<p style="text-align: right;">74</p> <p>1 infant's sex. And he made the statement to me that he</p> <p>2 didn't know that. So, since we had the infant on the</p> <p>3 back, I picked up the diaper slightly and looked. And I</p> <p>4 told him it was -- it's definitely a male. And that's</p> <p>5 how we knew the sex of the child.</p> <p>6 Q. Could you estimate how old the child appeared</p> <p>7 to you?</p> <p>8 A. Yes. From seeing that there was not teeth and</p> <p>9 from the size of the infant and just what I had seen, it</p> <p>10 appeared to me three to six months old.</p> <p>11 Q. Was there anything there that you saw that told</p> <p>12 you who the infant was?</p> <p>13 A. No.</p> <p>14 Q. And you said that when the child was --</p> <p>15 originally when you saw the child, he was laying face</p> <p>16 down with his head turned. When the child was turned</p> <p>17 over, can you tell the jury whether or not you were able</p> <p>18 to observe any injuries to the infant?</p> <p>19 A. Yes.</p> <p>20 Q. Tell the jury what you observed and where.</p> <p>21 A. The first thing I had noticed, there was some</p> <p>22 type of specks, some type of -- they weren't really</p> <p>23 puncture wounds. They were just puncture marks. Not</p> <p>24 necessarily through the skin. There was severe damage</p> <p>25 to the top of the infant's head. You could see the</p>	<p style="text-align: right;">76</p> <p>1 A. Yes, I was.</p> <p>2 Q. Do you know whether or not Officer Pena with</p> <p>3 the crime scene unit, is he capable of doing an accurate</p> <p>4 recording of a crime scene?</p> <p>5 A. Yes, he is. He's trained.</p> <p>6 Q. Do you know whether or not he uses a camera</p> <p>7 that is capable of making an accurate recording?</p> <p>8 A. Yes. Sure he is.</p> <p>9 Q. And did you review at my request the crime</p> <p>10 scene video to determine whether or not it fairly and</p> <p>11 accurately shows the crime scene that you observed out</p> <p>12 there on January 29th, 2008?</p> <p>13 A. Yes, I did. And it was accurate.</p> <p>14 Q. And with the exception of any kind of</p> <p>15 narration, has that been removed so that there's no</p> <p>16 sound?</p> <p>17 A. Yes.</p> <p>18 Q. Now, when you were out there, did you -- were</p> <p>19 you able to observe anything else other than the infant?</p> <p>20 A. Yes.</p> <p>21 Q. Can you tell the jury what, if anything else,</p> <p>22 you saw out there appeared to be related to this crime</p> <p>23 scene?</p> <p>24 A. It's a fairly open area and the grass is very</p> <p>25 short in that location. And it's hilly. At the top of</p>
<p style="text-align: right;">75</p> <p>1 concave in the top of the head. And, of course, I could</p> <p>2 see some lividity in the -- post-mortem lividity in the</p> <p>3 ear. I think it was the infant's right ear, if I'm not</p> <p>4 mistaken.</p> <p>5 Q. Now, when you say lividity, tell the jury what</p> <p>6 you're talking about and what it is that you're</p> <p>7 observing that makes you think you've seen lividity.</p> <p>8 A. Yes. Post-mortem lividity is when a body lays</p> <p>9 in a certain position. Immediately after death,</p> <p>10 lividity starts. And that's blood settling to that</p> <p>11 certain portion of the body. And it happens</p> <p>12 immediately. It tends to get worse as time goes on.</p> <p>13 Lividity settles. So, it's a good way of telling if a</p> <p>14 body has been in that position or if it had been moved</p> <p>15 after death, things like that.</p> <p>16 Q. All right. Now, when you were out there, were</p> <p>17 there photographs taken of the scene and the infant?</p> <p>18 A. Yes. I don't know how many before I got there.</p> <p>19 Pena was taking photographs as I was helping with the</p> <p>20 crime scene tape that when he had gotten through with</p> <p>21 his photos, he had asked me to step in. So I -- and he</p> <p>22 did take more photos as I was standing there because I</p> <p>23 don't think he had turned the infant over yet.</p> <p>24 Q. Were you present when the video was taken --</p> <p>25 was done?</p>	<p style="text-align: right;">77</p> <p>1 the hill you can see pretty much everything from there</p> <p>2 until it gets to the bottom of the hill where there's</p> <p>3 some high grass. The infant was up towards the top of</p> <p>4 the hill, say three-quarters up, I'm guessing. And down</p> <p>5 to the bottom of the hill kind of a straight line from</p> <p>6 the sidewalk or from the parking curb up there there was</p> <p>7 an infant seat down at the bottom next to the high</p> <p>8 grass. And there was another part of the foam it looked</p> <p>9 like from that seat just above the infant's head, upper</p> <p>10 part of the hill.</p> <p>11 Q. So, if somebody is driving by this location at</p> <p>12 Cherry Hill, can you tell the jury whether or not the</p> <p>13 car seat would have been visible to anybody driving by?</p> <p>14 Because you said I think it was down towards the bottom</p> <p>15 of the hill. Would it be visible from just driving by?</p> <p>16 A. Possibly, but it might be a little tough.</p> <p>17 It's at the bottom of the hill. You would have to be</p> <p>18 looking for it.</p> <p>19 Q. Could you tell approximately how many feet from</p> <p>20 the curb and the concrete the infant would have been?</p> <p>21 Just guesstimate.</p> <p>22 A. Yeah. I didn't do any measurements. That</p> <p>23 wasn't my job. I think it's probably in my estimation</p> <p>24 would have been probably 25, 30 feet, maybe.</p> <p>25 Q. Then can you estimate for the jury</p>

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<p style="text-align: right;">78</p> <p>1 approximately how far from the infant's body would the</p> <p>2 car seat have been?</p> <p>3 A. Probably another 30 feet or so.</p> <p>4 MS. CAMERON: If I may approach the</p> <p>5 witness, Your Honor?</p> <p>6 THE COURT: You may.</p> <p>7 Q. (BY MS. CAMERON) Sir, I'm going to show you</p> <p>8 what's been marked for identification purposes as</p> <p>9 State's Exhibit No. 57. And do you recognize that as</p> <p>10 the crime scene video that you have your initials on?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And can you tell the Court and the jury, did</p> <p>13 you have an opportunity to review this and -- before you</p> <p>14 placed your initials on it to decide whether or not you</p> <p>15 recognized it as fairly and accurately showing the crime</p> <p>16 scene?</p> <p>17 A. Yes, I did.</p> <p>18 Q. Now I'm going to also show you what's been</p> <p>19 marked for identification purposes as State's Exhibit</p> <p>20 Nos. 58 through 74. And if you could look those over?</p> <p>21 Do these photos, State's Exhibit Nos. 59</p> <p>22 through 74, do they fairly and accurately show the scene</p> <p>23 as you recall it on January 29th, 2008?</p> <p>24 A. Yes, they do.</p> <p>25 MS. CAMERON: Your Honor, at this time I'm</p>	<p style="text-align: right;">80</p> <p>1 that as well. And we hadn't turned the child back over.</p> <p>2 It was laying face up.</p> <p>3 When he got there, he wanted the child placed</p> <p>4 back in its original position. When we turned the child</p> <p>5 over, I noticed two distinct red marks on the back of</p> <p>6 the child's head. And I described them as being</p> <p>7 rectangle shaped. One a full perfect rectangle, the</p> <p>8 other one just above it as about half of the same type</p> <p>9 of rectangle.</p> <p>10 MS. CAMERON: Your Honor, if I may publish</p> <p>11 now the photographs, State's Exhibit Nos. 58 through 74?</p> <p>12 THE COURT: You may.</p> <p>13 Q. (BY MS. CAMERON) Now, Officer Kershaw, we're</p> <p>14 now looking at State's Exhibit No. 58. If you can</p> <p>15 explain to the jury what it is that they're seeing from</p> <p>16 this perspective?</p> <p>17 A. Yeah. This view is facing the south like</p> <p>18 you're facing those condos out there in the south to the</p> <p>19 beach. The seawall, what they -- commonly known as</p> <p>20 Cherry Hill, is that hill where the cars are being</p> <p>21 shown. The white sheet is where --</p> <p>22 Q. You can use the pointer.</p> <p>23 A. Okay. The white sheet is where the body of the</p> <p>24 infant is.</p> <p>25 Q. So, when you talked about the 20 to 25 feet</p>
<p style="text-align: right;">79</p> <p>1 going to tender to opposing counsel 58 through 74 and</p> <p>2 State's Exhibit No. 57 and offer the same into evidence.</p> <p>3 MR. LOPER: State's Exhibit No. 57 and</p> <p>4 then 58 through 74, we have no objections.</p> <p>5 THE COURT: All right. Those exhibits are</p> <p>6 admitted.</p> <p>7 (State's Exhibit Nos. 57 through 74 admitted)</p> <p>8 MS. CAMERON: Thank you, Your Honor.</p> <p>9 If I may approach, Your Honor?</p> <p>10 THE COURT: You may.</p> <p>11 Q. (BY MS. CAMERON) Officer Kershaw, are some of</p> <p>12 these photographs difficult to look at? Are they fairly</p> <p>13 graphic in showing the infant as the baby was found on</p> <p>14 that day?</p> <p>15 A. I would say they're very graphic, yes.</p> <p>16 Q. And in addition to the child's skull and some</p> <p>17 red marks that you saw, can you tell the jury whether or</p> <p>18 not there was any noticeable mark or imprint that you</p> <p>19 saw in the back of the child's head?</p> <p>20 A. Yes.</p> <p>21 Q. Can you describe that for the jury?</p> <p>22 A. What had occurred was once we had covered the</p> <p>23 child back up and he had done the video and all that,</p> <p>24 the Medical Examiner arrived on the scene and after a</p> <p>25 while wanted to examine the body itself. I assisted in</p>	<p style="text-align: right;">81</p> <p>1 difference, where those vehicles are, is that on that</p> <p>2 concrete embankment where you're kind of giving your</p> <p>3 guesstimation where the infant is from the road?</p> <p>4 A. Yes. The sidewalk and the curb is actually</p> <p>5 right there. And then that's what my estimation was</p> <p>6 from there to there.</p> <p>7 Q. State's Exhibit No. 59 appears that there's</p> <p>8 some crime scene tape. And are these all various police</p> <p>9 vehicles that are out there in the investigation?</p> <p>10 A. Yes, ma'am. The actual -- that's my car the</p> <p>11 way I pulled up. That's Sergeant Schwartz's unmarked</p> <p>12 car. Of course, another patrol car. And that little</p> <p>13 truck is Officer Blackwell's truck.</p> <p>14 Q. And do you know where approximately the infant</p> <p>15 would have been or where Mr. Zaro's vehicle would have</p> <p>16 been if we're looking at this photograph -- is this the</p> <p>17 perimeter back here?</p> <p>18 A. Yeah. This is actually a hill going down to</p> <p>19 the roadway. That's a flat section of it where you can</p> <p>20 see my car's parked. The infant is just on the other</p> <p>21 side of that telephone pole, just on the east side.</p> <p>22 You're facing east. The photo is facing east at this</p> <p>23 point.</p> <p>24 Q. State's Exhibit No. 60, if you could explain</p> <p>25 what the jury is looking at. What way are they facing</p>

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<p style="text-align: right;">82</p> <p>1 at this point? Is this west?</p> <p>2 A. Yes, ma'am. This is facing west. That's</p> <p>3 actually my patrol unit right there. That wasn't there.</p> <p>4 Of course, when I got there, that's Sergeant Jones' van.</p> <p>5 There's another ID unit. And that's Sergeant Schwartz's</p> <p>6 car and that's Sergeant Schwartz.</p> <p>7 Q. State's Exhibit No. 61, if you can explain what</p> <p>8 the jury is looking at in this photograph?</p> <p>9 A. That was taken primarily right about where my</p> <p>10 unit was looking to the -- it would be the northeast,</p> <p>11 looking -- that's a ship channel out there and to the</p> <p>12 north. Of course there's the telephone pole.</p> <p>13 Q. Do you know of your own personal knowledge</p> <p>14 whether or not this field, this area would be where the</p> <p>15 coyotes are?</p> <p>16 A. Yes. There's where they live out in there and</p> <p>17 also between -- on the other side, on the south side of</p> <p>18 the seawall itself, there's some marshy land out there.</p> <p>19 We've seen them all over out there. They're everywhere.</p> <p>20 Q. Now, it appears that the white sheet is there</p> <p>21 to the right next to the pole. And then if you look to</p> <p>22 the left, is the car seat visible from this photograph?</p> <p>23 A. Yes, it is. That's it right there.</p> <p>24 Q. And did you actually approach that and look at</p> <p>25 it?</p>	<p style="text-align: right;">84</p> <p>1 found the infant initially?</p> <p>2 A. Yes. The first time I lifted the sheet when</p> <p>3 Officer Pena asked me to, that's the way I saw the</p> <p>4 infant. Exactly like that.</p> <p>5 Q. Wearing only a diaper?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. State's Exhibit No. 64, and this is a close-up</p> <p>8 of the infant. And tell the jury what it is that they</p> <p>9 are seeing with the child's head.</p> <p>10 A. The superficial puncture things I was talking</p> <p>11 about it appeared to me were on the facial area. That's</p> <p>12 an indentation to the skull that I had talked about.</p> <p>13 Q. State's Exhibit No. 65, can you explain to the</p> <p>14 jury what they're looking at at this time?</p> <p>15 A. Yeah. This would be after the -- we had done</p> <p>16 all the examining of the child and after the Medical --</p> <p>17 after the Medical Examiner had gotten there, I noticed</p> <p>18 that Officer Pena had put that -- it's like some PVC</p> <p>19 things. It outlined certain pieces of evidence, I</p> <p>20 guess. It's an evidence outlining kit, I guess you</p> <p>21 would call it. That's around the child right there.</p> <p>22 Q. And at this point had anything been moved from</p> <p>23 the locations that they were found so that you could see</p> <p>24 the perspective of where the car seat is from the</p> <p>25 infant?</p>
<p style="text-align: right;">83</p> <p>1 A. Yes, I did.</p> <p>2 Q. State's Exhibit No. 62, do you recognize the</p> <p>3 people that are in this photograph?</p> <p>4 A. Yes, I do.</p> <p>5 Q. And would this be Sergeant Almendarez that is</p> <p>6 next to Schwartz?</p> <p>7 A. Yes. Sergeant Almendarez, Sergeant Schwartz,</p> <p>8 there's Pena. That, of course, is me, Blackwell,</p> <p>9 Lieutenant Trevino.</p> <p>10 Q. Now, there appears to be some kind of an infant</p> <p>11 headrest here. Do you know whether or not that was part</p> <p>12 of the crime scene that was collected?</p> <p>13 A. Yes, it was. The headrest is what I described</p> <p>14 earlier as being just above the head area above the</p> <p>15 child. And then the material at least matched -- that I</p> <p>16 checked matched the material on the seat.</p> <p>17 Q. Can you also see in this photograph the</p> <p>18 perspective of where the car seat is from where the</p> <p>19 infant is?</p> <p>20 A. Yes, you can. It's sort of in a northwesterly</p> <p>21 direction, I would say.</p> <p>22 Q. Now, at that point is it difficult to tell, is</p> <p>23 the infant face up or face down?</p> <p>24 A. The infant's face up at that point.</p> <p>25 Q. State's Exhibit No. 63, is this the way you</p>	<p style="text-align: right;">85</p> <p>1 A. Yes. To my knowledge there was nothing moved</p> <p>2 at that particular time.</p> <p>3 Q. State's Exhibit No. 66, there appears to be</p> <p>4 some kind of an indentation or a mark. Can you explain</p> <p>5 to the jury what it is that you saw and observed when</p> <p>6 you looked at the back of the infant's head?</p> <p>7 A. Yes. Those rectangle markings, indentions is</p> <p>8 what I described earlier. One was pretty identifiable</p> <p>9 in a rectangle and the other one was -- looked like it</p> <p>10 was the same type, but about half of it you could see at</p> <p>11 that point.</p> <p>12 Q. State's Exhibit No. 67, is this the infant face</p> <p>13 up?</p> <p>14 A. Yes, it is.</p> <p>15 Q. And not the way that the child was found,</p> <p>16 correct?</p> <p>17 A. No. That was after we had turned him over.</p> <p>18 Q. And it appears that there's some redness around</p> <p>19 the ear. I'm going to show you what's in evidence as</p> <p>20 State's Exhibit No. 68. Now, as far as -- I think you</p> <p>21 had shared with the jury that you thought that this</p> <p>22 might be some lividity. Would that have been where the</p> <p>23 child was laying? Would the head have been down on that</p> <p>24 ear?</p> <p>25 A. Yes. When I first saw the child laying down,</p>

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<p style="text-align: right;">86</p> <p>1 the head was turned to the left which would have placed</p> <p>2 the right ear on the ground. And that's why I thought</p> <p>3 that that would be the beginning of lividity.</p> <p>4 Q. As far as what it could be, were you present at</p> <p>5 the time of the autopsy?</p> <p>6 A. No, I was not.</p> <p>7 Q. Do you know whether or not this could have been</p> <p>8 from trauma or lividity?</p> <p>9 A. I do not.</p> <p>10 Q. Thank you, sir. State's Exhibit No. 69, tell</p> <p>11 the jury what they're looking at on that photograph.</p> <p>12 Let me back it up to -- what is the jury looking at at</p> <p>13 this time?</p> <p>14 A. That's the car seat that I described. It's</p> <p>15 actually laying on one of the top corners. You're</p> <p>16 seeing the bottom of it. At this point the head area is</p> <p>17 up here.</p> <p>18 Q. State's Exhibit No. 70, can you see that to be</p> <p>19 an Evenflo design or the brand that has a distinctive</p> <p>20 pattern on it?</p> <p>21 A. Yes. It's two separate patterns of material,</p> <p>22 but it's all sewn the same thing. You can tell it was</p> <p>23 made that way. The headrest that I said a while ago</p> <p>24 matched this part and material.</p> <p>25 Q. Now, did you make any attempt -- when you saw</p>	<p style="text-align: right;">88</p> <p>1 Q. And State's Exhibit No. 73 appears to be some</p> <p>2 kind of divot. And did you actually observe that bit of</p> <p>3 a -- almost like a chunk of the ground removed?</p> <p>4 A. Yes, I did. That area right there we had</p> <p>5 noticed was uphill from the infant and looked like a</p> <p>6 fresh indentation that someone -- something had hit there</p> <p>7 or something had struck the ground at that point, we</p> <p>8 thought.</p> <p>9 Q. And State's Exhibit No. 71, does that also show</p> <p>10 that same kind of indentation or divot in the ground?</p> <p>11 A. Yes, it does. That appears to be the same one</p> <p>12 after they marked it with a measuring stick.</p> <p>13 Q. You talked about the difference from -- the</p> <p>14 infant's body being some 20 or 25 feet away and then</p> <p>15 this car seat being maybe 40 or 45 feet away. Do you</p> <p>16 have an opinion as to whether or not that that might be</p> <p>17 consistent with maybe an initial throw of the car seat</p> <p>18 maybe having landed at that location and then it would</p> <p>19 have been thrown a second time to get it to the distance</p> <p>20 it was?</p> <p>21 MR. LOPER: Judge, I have to object. I</p> <p>22 think that's calling for speculation.</p> <p>23 THE COURT: Sustained.</p> <p>24 Q. (BY MS. CAMERON) Do you remember noting</p> <p>25 whether or not there was any dirt mark on a portion of</p>
<p style="text-align: right;">87</p> <p>1 this baby seat, did you look to see whether or not there</p> <p>2 might be anything on there that might be an identifying</p> <p>3 mark that would show who this infant was?</p> <p>4 A. Yes, I did.</p> <p>5 Q. And tell the jury what was going through your</p> <p>6 mind and what you looked for.</p> <p>7 A. When I examined -- there was a couple of things</p> <p>8 I was actually looking at when I went to look at it.</p> <p>9 The first thing I wanted to do was try to see if there</p> <p>10 was maybe a name written on it, a last name. A lot of</p> <p>11 parents will do that if they drop a child off at a day</p> <p>12 care or something. They have to write the name on it so</p> <p>13 that they could come back and pick the child up and they</p> <p>14 don't get the wrong seat. I examined that and could not</p> <p>15 find any identifiable names or anything like that on it.</p> <p>16 Q. Show you State's Exhibit No. 71. And what do</p> <p>17 you recognize that to be?</p> <p>18 A. That's the -- appeared to be the headrest</p> <p>19 portion that had detached from the car seat.</p> <p>20 Q. State's Exhibit No. 72, did you see a blue</p> <p>21 infant sock at the location?</p> <p>22 A. Yes, I did.</p> <p>23 Q. Did you see the matching sock anywhere at that</p> <p>24 location?</p> <p>25 A. I do not recall, no. I don't think so.</p>	<p style="text-align: right;">89</p> <p>1 the car seat when it was observed?</p> <p>2 A. I observed the dirt mark on the seat. You</p> <p>3 could see it when you walked up to it.</p> <p>4 Q. And do you know where that dirt mark came from?</p> <p>5 A. Don't know. But at that particular time I</p> <p>6 thought it could have come from that indentation in the</p> <p>7 ground.</p> <p>8 MS. CAMERON: Your Honor, at this time I</p> <p>9 would like to publish for the jury the crime scene</p> <p>10 video, which is State's Exhibit No. 57.</p> <p>11 THE COURT: You may proceed.</p> <p>12 Q. (BY MS. CAMERON) Again, this is somewhat</p> <p>13 difficult to watch because of showing the infant?</p> <p>14 A. Yes, ma'am, it is.</p> <p>15 (State's Exhibit No. 57 played for Jury)</p> <p>16 Q. (BY MS. CAMERON) I wanted to ask you a couple</p> <p>17 of questions. I know I've been calling you Sergeant</p> <p>18 Kershaw. What's your title now with the office of the</p> <p>19 Attorney General?</p> <p>20 A. I'm a sergeant as well. I was a sergeant in</p> <p>21 Galveston. I was promoted to sergeant with the Attorney</p> <p>22 General's Office.</p> <p>23 Q. All right. Now, I noticed on the crime scene</p> <p>24 video when we focused in on the infant, the baby is face</p> <p>25 up. Was the infant found that way or was the infant</p>

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<p style="text-align: right;">90</p> <p>1 found initially face down?</p> <p>2 A. When I first saw the infant, it was face down.</p> <p>3 Q. All right. Now, when the camera was panning in</p> <p>4 on the car seat, it looked like they were -- it was</p> <p>5 focusing in on what looked like some dirt on the end of</p> <p>6 the car seat. Did you see that?</p> <p>7 A. Yes, I did. That's why I described earlier as</p> <p>8 possibly maybe being in contact with that indentation in</p> <p>9 the ground.</p> <p>10 Q. All right, sir. And after you were out there</p> <p>11 at the crime scene, did you have any further involvement</p> <p>12 and follow-up with this particular case?</p> <p>13 A. I did not.</p> <p>14 Q. And who did you understand to be the sergeant</p> <p>15 or the detective in charge of the case from there on?</p> <p>16 A. To my particular knowledge, I thought it was</p> <p>17 Sergeant Schwartz had the case as detective.</p> <p>18 MS. CAMERON: Okay. Thank you, sir.</p> <p>19 And I'll pass the witness.</p> <p>20 THE COURT: If I could see the attorneys</p> <p>21 for just a moment, please.</p> <p>22 (Discussion at the bench, off the record)</p> <p>23 (Open court, Defendant and jury present)</p> <p>24 THE COURT: Ladies and gentlemen, I</p> <p>25 understand that there will be more questions of Sergeant</p>	<p style="text-align: right;">92</p> <p>1 P-a-t-t-e-r-s-o-n.</p> <p>2 THE COURT: All right. Mr. Patterson, you</p> <p>3 have been identified as a potential witness in this</p> <p>4 case. If I can get you to raise your right hand.</p> <p>5 (Witness sworn)</p> <p>6 THE COURT: Thank you, Mr. Patterson. Let</p> <p>7 me tell you that the Witness Exclusion Rule is in</p> <p>8 effect. In Texas law that basically means that only a</p> <p>9 witness who is testifying can be present in the</p> <p>10 courtroom. So, when you're waiting to testify, you will</p> <p>11 have to wait outside the courtroom. Please do not</p> <p>12 discuss your testimony with any other witnesses. You</p> <p>13 are permitted to speak to the attorneys if they choose</p> <p>14 to talk to you. Okay?</p> <p>15 THE WITNESS: Okay.</p> <p>16 THE COURT: Any questions about that Rule?</p> <p>17 THE WITNESS: Is that today?</p> <p>18 THE COURT: That's effective from this</p> <p>19 point to the end of the trial.</p> <p>20 THE WITNESS: Yes, sir. But do I stay --</p> <p>21 I mean, am I going to be called today?</p> <p>22 THE COURT: I do not know. If you want to</p> <p>23 give a cell number or some contact information, e-mail,</p> <p>24 that type of thing to the attorneys, you're welcome to</p> <p>25 do that. But I don't know what their trial schedule is</p>
<p style="text-align: right;">91</p> <p>1 Kershaw. It's noon. We're going to go ahead and take</p> <p>2 our lunch break. Please remember the instructions that</p> <p>3 you're under. I'm going to give you about an hour and</p> <p>4 20 minutes for lunch. So, if you will be back at 1:20,</p> <p>5 ready to proceed. Thank you.</p> <p>6 (Open court, Defendant present, no jury)</p> <p>7 THE COURT: Thank you. We'll stand in</p> <p>8 recess until 1:20.</p> <p>9 (Lunch break held)</p> <p>10 (Open court, Defendant present, no jury)</p> <p>11 THE COURT: It is 1:25. We're about to</p> <p>12 get started. I understand there may be a witness</p> <p>13 present who needs to be sworn.</p> <p>14 MS. CAMERON: Yes, Your Honor. Present in</p> <p>15 the courtroom is a gentleman by the name of Royston</p> <p>16 Patterson who was interviewed by the Galveston Police</p> <p>17 Department who gave a lengthy statement. He may</p> <p>18 potentially be a witness in this case.</p> <p>19 THE COURT: Mr. Patterson, will you please</p> <p>20 come forward, sir? Sir, if you will come here before</p> <p>21 the court reporter, please. Thank you, sir. What is</p> <p>22 your name?</p> <p>23 THE WITNESS: Royston Patterson.</p> <p>24 THE COURT: Spell that for me, please.</p> <p>25 THE WITNESS: R-o-y-s-t-o-n</p>	<p style="text-align: right;">93</p> <p>1 and when they might call you. Okay?</p> <p>2 THE WITNESS: Okay.</p> <p>3 THE COURT: Thank you, sir.</p> <p>4 Let me also remind the participants and</p> <p>5 those who are in attendance as visitors viewing the</p> <p>6 trial, when the jury is present and there are witnesses</p> <p>7 testifying, as much as possible if you will remain in</p> <p>8 your seats and only leave during breaks, that kind of</p> <p>9 helps the jury stay focused on the witnesses. If you</p> <p>10 don't feel like you can stay through the testimony of a</p> <p>11 witness, please leave before they begin testifying.</p> <p>12 Let's go ahead and bring out the jury.</p> <p>13 (Open court, Defendant and jury present)</p> <p>14 THE COURT: Please be seated.</p> <p>15 Mr. Loper, you may cross-examine the</p> <p>16 witness.</p> <p>17 MR. LOPER: Thank you, Judge.</p> <p>18 CROSS-EXAMINATION</p> <p>19 BY MR. LOPER:</p> <p>20 Q. Sergeant Kershaw, how are you?</p> <p>21 A. I'm good, sir. Thank you.</p> <p>22 Q. I'm Bob Loper. I'm one of the lawyers in this</p> <p>23 case for Mr. Mullis. You and I have never talked about</p> <p>24 this case, have we?</p> <p>25 A. We have not.</p>

<p style="text-align: right;">94</p> <p>1 Q. When did you retire from the Galveston Police 2 Department? 3 A. October of 2008. Right after Hurricane Ike. 4 Q. Okay. Later in the year after January of '08 5 when this incident occurred, correct? 6 A. Yes, correct. 7 Q. Okay. Now you work for the Attorney General's 8 Office? 9 A. Yes, I do. 10 Q. You do Medicaid fraud type investigations? 11 Among other things probably? 12 A. Yes. 13 Q. I guess from time to time since October of 14 2008, you've been called back to testify about cases 15 that you have been involved in when you were employed by 16 the Galveston Police Department, correct? 17 A. Yes, that's correct. 18 Q. And this happens to be one of them? 19 A. Yes, sir. 20 Q. And of all the things you told the jury about 21 this morning about what you did on January 29th of 2008, 22 you certainly recorded that in some type of offense 23 report, didn't you? 24 A. I did. 25 Q. And I would imagine since that was almost three</p>	<p style="text-align: right;">96</p> <p>1 at that time was a patrol supervisor, correct? 2 A. That's correct. 3 Q. How many officers did you supervise? 4 A. Shift-wise, probably 30. Day-to-day basis, 5 probably 15 to 18, something like that. 6 Q. This happened while you were on duty and 7 working on January 29th of 2008, correct? 8 A. Correct. 9 Q. You were at the police station when this call 10 came in, correct? 11 A. Yes, I was. 12 Q. Was this sort of a police department 13 office-wide dispatch that you heard that brought you to 14 this scene or was this something that was exclusively 15 for your ears only that day? 16 A. It wasn't for me. It was a broadcast that I 17 heard. 18 Q. I recall that you told the jury this morning 19 that you informed your lieutenant that you were going to 20 go to the scene, correct? 21 A. That's correct. 22 Q. Is that because you were the patrol supervisor 23 that you made that decision or is it part of your 24 supervisory authority that you would go to a scene like 25 this?</p>
<p style="text-align: right;">95</p> <p>1 years ago, you certainly had a chance to look at that 2 prior to testifying today, haven't you? 3 A. Yes, I have. 4 Q. And the Galveston Police Department or the 5 Galveston County District Attorney's Office made that 6 available to you for your review, didn't they? 7 A. They did, but I kept a copy of my report. 8 Q. You had also kept a copy? 9 A. Yes, I did. 10 Q. Okay. Was that pretty much a one-page 11 statement or summary of a report? 12 A. Yes, it was. 13 MR. LOPER: May I approach the witness, 14 Judge? 15 THE COURT: You may. 16 Q. (BY MR. LOPER) Let me show you a copy that had 17 been provided to us. I just want to make sure that I'm 18 asking about the same page that you're talking about. 19 A. That's my report. 20 Q. Okay. Any part of what you did in this case 21 that you may have recorded in an offense report anywhere 22 else in this case other than this one page? 23 A. No. 24 Q. And I think you told us this morning that at 25 the time that this occurred in January of 2008, your job</p>	<p style="text-align: right;">97</p> <p>1 A. Both of those and something else as well. 2 Q. Okay. You were not, were you, assigned to any 3 type of Homicide unit in the Galveston Police 4 Department, were you? 5 A. At that time, no. 6 Q. And was there any way for you to know at the 7 time that you heard this dispatch whether any other 8 officers had arrived at the scene before you? 9 A. Only the ones I heard on the radio from talking 10 to each other. 11 Q. I know that you told us that when you got there 12 that Detective Schwartz and that Officer Scott Pena were 13 already present, correct? 14 A. Yes. 15 Q. You were able to tell by radio traffic and 16 having a radio with you that they had been dispatched as 17 well and that they were on their way to the scene also, 18 correct? 19 A. Not necessarily. I didn't know exactly who was 20 there. I knew there was radio traffic about the scene 21 about being there and what the scene was about 22 basically. 23 Q. And you also said that sort of your general 24 responsibility, as you understood it, when you got there 25 was to assist in whatever capacity there at the scene,</p>

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<p style="text-align: right;">98</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. And the person that would have requested your</p> <p>4 help in certain areas or directed you in certain areas,</p> <p>5 that would have been Detective Schwartz; is that right?</p> <p>6 A. Not necessarily.</p> <p>7 Q. Okay. It could have been anyone that was there</p> <p>8 that could have asked for your help?</p> <p>9 A. No. The crime scene technicians handled the</p> <p>10 scenes. Even though you might be a supervisor they have</p> <p>11 their own supervisors as well.</p> <p>12 Q. And in this particular case I guess that would</p> <p>13 have been Scott Pena?</p> <p>14 A. Yes. He was the crime scene technician there</p> <p>15 at the scene.</p> <p>16 Q. Were there any other crime scene technicians</p> <p>17 there other than Officer Pena?</p> <p>18 A. I didn't see them, not when I got there --</p> <p>19 first got there, no.</p> <p>20 Q. Okay. And one of the things that you did was</p> <p>21 that you assisted in putting out the crime scene tape,</p> <p>22 correct?</p> <p>23 A. That's correct.</p> <p>24 Q. When you arrived on the scene do you recall</p> <p>25 whether you were brought to where the baby was found</p>	<p style="text-align: right;">100</p> <p>1 A. I did not.</p> <p>2 Q. After you had helped with laying out the crime</p> <p>3 scene tape, is that when you approached the infant on</p> <p>4 the ground?</p> <p>5 A. Yes. Once Officer Pena asked me to come inside</p> <p>6 the tape, I did so.</p> <p>7 Q. Right. At his request you came in to help him</p> <p>8 out. I believe you also said that you assisted him in</p> <p>9 taking the sheet off of the baby; is that right?</p> <p>10 A. That's why he called me over, yes.</p> <p>11 Q. When you arrived at the scene, the sheet had</p> <p>12 already been placed over the infant; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. And other than them telling you what was there,</p> <p>15 you didn't really see for yourself what was there until</p> <p>16 the sheet was removed, correct?</p> <p>17 A. Correct.</p> <p>18 Q. You were not aware of your own personal</p> <p>19 knowledge how long the baby had been there, were you?</p> <p>20 A. No.</p> <p>21 Q. And you were not aware of your own personal</p> <p>22 knowledge whether the baby had been moved in that</p> <p>23 location to any extent, were you?</p> <p>24 A. No.</p> <p>25 Q. You just know that when you arrived and there</p>
<p style="text-align: right;">99</p> <p>1 before you began assisting with the crime scene tape or</p> <p>2 did you immediately begin helping with the crime scene</p> <p>3 tape?</p> <p>4 A. First thing I did was assist Sergeant Schwartz</p> <p>5 rolling out the crime scene tape. He had it about half</p> <p>6 done. I just assisted helping him finish.</p> <p>7 Q. So, you helped finish laying out the crime</p> <p>8 scene tape before you ever approached the body; is that</p> <p>9 right?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. And I'm sure that there was some</p> <p>12 conversation that went on between you and the officers</p> <p>13 that were already present about who had found the baby;</p> <p>14 is that right?</p> <p>15 A. Yes, somewhere in there. I can't say whether</p> <p>16 it was at that particular time or later on while I was</p> <p>17 there. But, yes, I was briefed.</p> <p>18 Q. What they knew because they beat you there,</p> <p>19 they were able to communicate to you; is that right?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. You were not involved in interviewing</p> <p>22 Mr. Or Ms. Zaro at all, were you?</p> <p>23 A. I was not.</p> <p>24 Q. You didn't do any interviews of any potential</p> <p>25 witnesses there at the scene, did you?</p>	<p style="text-align: right;">101</p> <p>1 was a sheet over where the infant was laying, that's</p> <p>2 where the infant was when you saw him, correct?</p> <p>3 A. That's the location where I saw him, yes, when</p> <p>4 I first picked up the sheet.</p> <p>5 Q. And when you were helping Officer Pena to take</p> <p>6 the sheet off of the baby, it was just you and he; is</p> <p>7 that correct?</p> <p>8 A. No.</p> <p>9 Q. Who else was helping?</p> <p>10 A. Officer Blackwell. He was on one corner. I</p> <p>11 was on the other.</p> <p>12 Q. Is that the image that is captured in one of</p> <p>13 the photographs that we had up there this morning, do</p> <p>14 you remember?</p> <p>15 A. I don't remember which one you might be talking</p> <p>16 about. It possibly is. I don't know.</p> <p>17 Q. Okay. It's also my understanding --</p> <p>18 MR. LOPER: Judge, is there a switch you</p> <p>19 click to make that work?</p> <p>20 THE COURT: Yes.</p> <p>21 MR. LOPER: Thank you.</p> <p>22 THE COURT: That's assuming, of course, it</p> <p>23 works. Is the Elmo on?</p> <p>24 Q. (BY MR. LOPER) Sergeant, let me see if I can</p> <p>25 find the photo I'm talking about. I tell you what. I</p>

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<p style="text-align: right;">102</p> <p>1 want to ask you about this one first. This is State's</p> <p>2 Exhibit No. 59 which is already in evidence. And you've</p> <p>3 even seen this previously in front of the jury, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And you've told the jury who all these vehicles</p> <p>6 belong to, correct?</p> <p>7 A. Yes, I did.</p> <p>8 Q. Now, in this photograph it appears that</p> <p>9 Mr. Zaro's car is not present, right?</p> <p>10 A. I don't know. I don't know his car. I never</p> <p>11 remembered seeing it.</p> <p>12 Q. Okay. Did you ever remember seeing a blue</p> <p>13 Mercedes?</p> <p>14 A. Possibly when I first got there. But I didn't</p> <p>15 really pay that much attention to it.</p> <p>16 Q. Let me show you now State's Exhibit No. 55.</p> <p>17 And that is also in evidence. Do you see the blue</p> <p>18 vehicle, the only vehicle that's in this photograph?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Okay. Do you see where it is in relation to</p> <p>21 the windmill-looking object back here to the left?</p> <p>22 A. Yeah. That tower to the left? Yes, sir.</p> <p>23 Q. Excuse me. It is a tower.</p> <p>24 And now I've pulled that up and now this is</p> <p>25 State's Exhibit No. 59 again. Do you see that it</p>	<p style="text-align: right;">104</p> <p>1 Q. Okay. Because earlier in your direct testimony</p> <p>2 you were talking about how Officer Pena was taking</p> <p>3 photographs before you arrived as far as you know and</p> <p>4 also at the time that you arrived, correct?</p> <p>5 A. What my testimony was about his photos was when</p> <p>6 he asked me to come in, he had already taken his photos,</p> <p>7 he said. Now, as far as watching him take the photos, I</p> <p>8 did not.</p> <p>9 Q. Okay. But then getting back to the obviously</p> <p>10 if he's in this, he didn't take it. But you don't have</p> <p>11 any recollection of who it would be that would have done</p> <p>12 this?</p> <p>13 A. No. This was later on after several other</p> <p>14 people got there. I pointed out that they were present</p> <p>15 in the photo. They weren't there at the beginning.</p> <p>16 Q. With your years of experience with the</p> <p>17 Galveston Police Department and the way you know that</p> <p>18 scenes are normally run, would it have been a crime</p> <p>19 scene investigator that would have taken a photograph</p> <p>20 like this or could it have been any patrol officer with</p> <p>21 a camera or do you know if there's any such policy?</p> <p>22 A. More than likely in a crime scene, it would</p> <p>23 have been one of the crime scene technicians.</p> <p>24 Q. So, there was another crime scene technician</p> <p>25 out there other than Scott Pena, it appears?</p>
<p style="text-align: right;">103</p> <p>1 doesn't appear that there's a blue vehicle there</p> <p>2 anymore?</p> <p>3 A. Correct.</p> <p>4 Q. In fact, where it was sitting now looks like</p> <p>5 there's several officers standing and talking?</p> <p>6 A. Yes.</p> <p>7 Q. Can we assume by the fact that in State's</p> <p>8 Exhibit No. 59, that Mr. Zaro's vehicle is gone, that</p> <p>9 Mr. Zaro was also gone or do you remember?</p> <p>10 A. I don't -- I never met the man. I don't know.</p> <p>11 Q. Now, the photo that I had originally come up</p> <p>12 here meaning to ask you about is State's Exhibit No. 62.</p> <p>13 And a minute ago when it was up here, you were able to</p> <p>14 identify the folks that were represented in that</p> <p>15 photograph, right?</p> <p>16 A. Correct.</p> <p>17 Q. And the man that's in sort of the khaki vest</p> <p>18 with a dark brown shirt, that's Officer Pena, correct?</p> <p>19 A. That is Officer Pena.</p> <p>20 Q. So, who would have been taking this photograph,</p> <p>21 if you know?</p> <p>22 A. I don't know. This was later after several</p> <p>23 other people had gotten there. This was not at the</p> <p>24 beginning when I got there. So, I don't know who was --</p> <p>25 who else had shown up.</p>	<p style="text-align: right;">105</p> <p>1 A. That's correct. I saw him later, yes.</p> <p>2 Q. Okay. And now getting back to the original</p> <p>3 question I was trying to ask you about, when the sheet</p> <p>4 was -- is this a photograph you were trying the first</p> <p>5 time the sheet was removed when you were there?</p> <p>6 A. It is not.</p> <p>7 Q. This is a later representation, correct?</p> <p>8 A. Yes, it is.</p> <p>9 Q. When it was first removed when you were telling</p> <p>10 us after you helped with the crime scene tape and Scott</p> <p>11 Pena and Officer Blackwell --</p> <p>12 A. Yes.</p> <p>13 Q. -- was assisting?</p> <p>14 A. Correct.</p> <p>15 Q. It was just the three of you?</p> <p>16 A. From what I remember, it was only three of us</p> <p>17 standing there when I first got -- when they first</p> <p>18 called me in to the tape, it was Officer Blackwell on</p> <p>19 the right corner; my cell phone, left corner and only</p> <p>20 Officer Pena there at that -- right around the child,</p> <p>21 yes.</p> <p>22 Q. And apparently there doesn't seem to be a</p> <p>23 photograph that would represent the three of you pulling</p> <p>24 up the sheet on that very first occasion? Or if there</p> <p>25 is, it's not amongst what we have right now?</p>

<p style="text-align: right;">106</p> <p>1 A. I didn't observe one, no.</p> <p>2 Q. Do you remember whether anybody took a</p> <p>3 photograph of the first time you lifted the sheet when</p> <p>4 it was you and Pena and Blackwell?</p> <p>5 A. I don't know that. No, I don't.</p> <p>6 Q. When you on that first occasion lifted the</p> <p>7 sheet, that was your first occasion to see the infant on</p> <p>8 the ground, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And that's when you made the observations that</p> <p>11 you told the jury about as far as the injuries -- excuse</p> <p>12 me -- the fact that you could see the child was dressed</p> <p>13 only in a diaper, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. You told the jury that at that time you really</p> <p>16 weren't in a position to be able to determine whether</p> <p>17 the child had any trauma or not, correct?</p> <p>18 A. I don't think I testified exactly to that, but</p> <p>19 I did see the indentions on the left side because the</p> <p>20 baby's head was turned.</p> <p>21 Q. Okay. Do you know whether anybody on the very</p> <p>22 first occasion you raised the sheet, you said that you</p> <p>23 first saw the baby with its stomach -- or face down on</p> <p>24 the ground, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">108</p> <p>1 someone been taking notes of exactly how he was laying?</p> <p>2 A. I just helped roll him over exactly where we</p> <p>3 had rolled him before, just back the opposite way.</p> <p>4 Q. But in terms of where his arms were and his</p> <p>5 hands were, was it just sort of this is the way we</p> <p>6 recollect that he was sitting or had someone actually</p> <p>7 taken some notes as to where the hands and the arms were</p> <p>8 positioned?</p> <p>9 A. I didn't take any notes and we didn't put his</p> <p>10 arms in certain positions, no.</p> <p>11 Q. When you were standing out there and looking at</p> <p>12 the child on the very first occasion when you lifted the</p> <p>13 shirt (sic), was there anyone who was taking any type of</p> <p>14 notes about here's what we found and the position that</p> <p>15 the baby is in?</p> <p>16 A. No one told me anything like that, no. I</p> <p>17 didn't observe anything.</p> <p>18 Q. Would that type of thing, taking notes about</p> <p>19 position, distance from the tower, distance from the</p> <p>20 pole, would that have been something that would have</p> <p>21 been your responsibility or Scott Pena's or someone</p> <p>22 else's?</p> <p>23 A. That would have been the crime scene tech's</p> <p>24 before I got there.</p> <p>25 Q. Okay. And that would have been Pena and</p>
<p style="text-align: right;">107</p> <p>1 Q. Head turned to the left?</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall whether anybody did take a</p> <p>4 photograph of that initial showing to show the baby in</p> <p>5 that position?</p> <p>6 A. I personally have no knowledge of that, no.</p> <p>7 Q. Okay. I know that later upon request you</p> <p>8 helped to turn the baby over; is that right?</p> <p>9 A. Officer Pena turned the child over while I was</p> <p>10 holding the sheet.</p> <p>11 Q. While you were standing there?</p> <p>12 A. Yes. While I was standing right there at it,</p> <p>13 yes.</p> <p>14 Q. All right. And then sometime later than that,</p> <p>15 the baby was turned back to the original position</p> <p>16 because the Medical Examiner's Office representative</p> <p>17 wanted to see the child in the original condition; is</p> <p>18 that right?</p> <p>19 A. Correct.</p> <p>20 Q. And who would have been the person that</p> <p>21 reversed the baby's position back to face down again?</p> <p>22 A. I think it was myself and Officer Pena both.</p> <p>23 Q. Okay. And how did you decide to put the baby</p> <p>24 back in the place that you had seen him before? Was it</p> <p>25 just your recollection of how he had been laying or had</p>	<p style="text-align: right;">109</p> <p>1 whoever else was helping?</p> <p>2 A. Right.</p> <p>3 Q. I'm going to jump ahead a little bit, but you</p> <p>4 were asked to estimate how far the infant was found from</p> <p>5 the street. And I believe that you said it was about</p> <p>6 25 -- you said it was an estimate on your part, but it</p> <p>7 was about 25 to 30 feet, correct?</p> <p>8 A. My best estimate, yes. I didn't step it off or</p> <p>9 measure it.</p> <p>10 Q. I understand that's just your estimate. And I</p> <p>11 guess that's just kind of looking back on it and also</p> <p>12 assisted by looking at the photograph, correct?</p> <p>13 A. Somewhat, yes.</p> <p>14 Q. Do you know if anyone did do any type of</p> <p>15 measurement to determine the exact distance the child</p> <p>16 was from the street?</p> <p>17 A. My particular knowledge, I hadn't seen that.</p> <p>18 Q. But traditionally and normally that would be</p> <p>19 the job of the crime scene technician?</p> <p>20 A. Correct, before you move anything.</p> <p>21 Q. And the same thing about the car seat. Your</p> <p>22 best estimate was it was another 30 feet beyond that,</p> <p>23 which I guess that means would make it 55 to 65 -- the</p> <p>24 car seat, 55 to 65, estimate, from the street, correct?</p> <p>25 A. Yes. I believe I said something to the tune of</p>

<p style="text-align: right;">110</p> <p>1 30 feet or so or more.</p> <p>2 Q. Right.</p> <p>3 A. So, you're probably right, 65, 70 feet.</p> <p>4 Q. I'm adding that 30 to the other 25 to 30.</p> <p>5 A. Correct.</p> <p>6 Q. But again, you didn't do measurements. And if</p> <p>7 anyone did, that would have been someone else, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Now, you were talking about determining that</p> <p>10 the child was a little boy, correct?</p> <p>11 A. Yes. I remember that.</p> <p>12 Q. You were able to do that by not picking up his</p> <p>13 entire body, but just picking up a corner of the diaper;</p> <p>14 is that correct?</p> <p>15 A. Not the corner. I didn't testify to that.</p> <p>16 Q. I'm sorry. How did you do it?</p> <p>17 A. My two fingers in the front. He was on his</p> <p>18 back. I just picked it up and looked in. Could see it</p> <p>19 was a male.</p> <p>20 Q. Okay. You were able to do that --</p> <p>21 A. I lifted away from his skin.</p> <p>22 Q. After he had already been flipped over on his</p> <p>23 back?</p> <p>24 A. Correct.</p> <p>25 Q. Right. Okay.</p>	<p style="text-align: right;">112</p> <p>1 area, don't you?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Any type of determination of the exact time of</p> <p>4 death or how long the child had been out there in the</p> <p>5 field would probably be done by someone with more</p> <p>6 experience in that area, wouldn't they?</p> <p>7 A. It would be.</p> <p>8 Q. Probably a doctor perhaps?</p> <p>9 A. Yes. Medical Examiner, someone like that.</p> <p>10 Q. Exactly, the Medical Examiner. But over the</p> <p>11 years you've learned enough to -- you kind of look at</p> <p>12 the signs to look for, correct?</p> <p>13 A. Correct.</p> <p>14 Q. When you were looking inside of the -- excuse</p> <p>15 me -- checking the baby's chin and jaw for any rigor</p> <p>16 mortis, you said that you were able to look inside of</p> <p>17 his mouth, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Did you use any type of artificial aid to help</p> <p>20 you get a better view, like a flashlight or penlight or</p> <p>21 anything like that?</p> <p>22 A. No. It was daylight. I just, like I say,</p> <p>23 pushed the chin down with my thumb to where I could see</p> <p>24 in there. There could have been even teeth. I just</p> <p>25 didn't see any.</p>
<p style="text-align: right;">111</p> <p>1 Is it your understanding that to that time, no</p> <p>2 one had yet determined the sex of the baby, gender of</p> <p>3 the baby?</p> <p>4 A. That, I'm not sure. I did make a comment to</p> <p>5 Officer Pena at that time that it was a male.</p> <p>6 Q. Do you know whether there were any photographs</p> <p>7 taken of that time when the gender of the baby was</p> <p>8 discussed?</p> <p>9 A. I'm not sure.</p> <p>10 Q. Let me ask you this in sort of a general sense.</p> <p>11 During the time that you and Officer Pena were picking</p> <p>12 up the sheet, when you were there to pick up the sheet</p> <p>13 for the very first time, do you remember him or anyone</p> <p>14 taking any photographs?</p> <p>15 A. Yes.</p> <p>16 Q. And who would that person have been?</p> <p>17 A. That would have been Pena.</p> <p>18 Q. Okay. The other photograph that I had a minute</p> <p>19 ago was a later time when the sheet was removed,</p> <p>20 correct?</p> <p>21 A. Yeah. And obviously someone else was taking</p> <p>22 it.</p> <p>23 Q. You were telling the jury about checking the</p> <p>24 infant for any rigor mortis. And obviously in your</p> <p>25 training and experience you have some experience in that</p>	<p style="text-align: right;">113</p> <p>1 Q. Do you recall or do you know whether anyone</p> <p>2 recorded that -- Officer Pena or any other crime scene</p> <p>3 technician photographed you doing that?</p> <p>4 A. No.</p> <p>5 Q. And the lividity that you told this jury about,</p> <p>6 I believe after you were shown a photograph by Ms.</p> <p>7 Cameron you agreed that this possible lividity that was</p> <p>8 present in the ear may have come from lividity, but it</p> <p>9 may have also come from some other trauma and you just</p> <p>10 weren't able to tell; is that right?</p> <p>11 A. Correct, at that time.</p> <p>12 Q. At that time?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall whether the scene photographs,</p> <p>15 the still scene photographs that are in evidence that</p> <p>16 we've talked about, whether those were taken before or</p> <p>17 after the scene videotape was taken?</p> <p>18 A. I wasn't -- I was present with part of the</p> <p>19 video and I know it was after I had gone into the scene.</p> <p>20 Q. Do you remember who took the scene videotape?</p> <p>21 A. I don't, no. I believe it was Pena, but it</p> <p>22 could have been Sergeant Jones. I don't really recall.</p> <p>23 Q. You spent some time talking about some dirt</p> <p>24 that was found on the car seat. And you were hazarding</p> <p>25 a guess as to whether that dirt on the seat may have</p>

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<p style="text-align: right;">114</p> <p>1 come from when it was left there on the ground, correct?</p> <p>2 A. I'm not sure what you mean by "hazard." I</p> <p>3 wasn't trying to compare the dirt with the ground. Just</p> <p>4 the position of where the dirt was located on the seat</p> <p>5 on the corner there and the mark in the ground. That's</p> <p>6 kind of what I was looking at.</p> <p>7 Q. But you didn't do any type of testing and do</p> <p>8 you know whether anybody did any type of testing to</p> <p>9 determine whether a specific amount of dirt that was on</p> <p>10 the corner of that chair had been there for two hours or</p> <p>11 two days or two weeks, did you?</p> <p>12 A. I did not do any testing, no.</p> <p>13 Q. No type of soil composition testing was done to</p> <p>14 determine whether it came from right there at the scene,</p> <p>15 did you?</p> <p>16 A. Not me, no.</p> <p>17 Q. Right. Do you know whether any of that was</p> <p>18 done?</p> <p>19 A. I do not know.</p> <p>20 Q. In the photograph of this -- this is State's</p> <p>21 Exhibit No. 73. I think this is the divot that you were</p> <p>22 talking about, wasn't it?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Do you remember where this, call it a</p> <p>25 divot, indentation was found in relation to the body?</p>	<p style="text-align: right;">116</p> <p>1 Q. When you're saying it's up the hill, you mean</p> <p>2 back to the left that's off the photograph, right?</p> <p>3 A. Correct. Probably just left of where you can</p> <p>4 see the officer's leg. The left and maybe behind him a</p> <p>5 little bit.</p> <p>6 Q. Was there any way -- does that help at all?</p> <p>7 A. Don't know.</p> <p>8 Q. Okay. Was there any way --</p> <p>9 A. I'm sorry. I can't tell from that photo.</p> <p>10 Q. Was there any way for you to determine how long</p> <p>11 that divot or indentation had been there?</p> <p>12 A. Just per speculation, I thought it was fresh.</p> <p>13 Q. How did you determine that it was fresh?</p> <p>14 A. There's other indentations in the ground that</p> <p>15 just appeared to be fresher than, you know, the ground's</p> <p>16 damp, things like that. I didn't examine it or get down</p> <p>17 close to it and feel it or anything like that.</p> <p>18 Q. I mean, the grass appears to be dead, doesn't</p> <p>19 it, around the indentation?</p> <p>20 A. Yes.</p> <p>21 Q. Did it look any more fresh or less fresh than</p> <p>22 any other holes that were out there on the ground?</p> <p>23 A. Down between all that on the ground part, it</p> <p>24 did. It appeared to be fairly fresh to me.</p> <p>25 Q. Do you know whether that could have been</p>
<p style="text-align: right;">115</p> <p>1 A. Yes.</p> <p>2 Q. Where was that?</p> <p>3 A. Slightly above -- up the hill, let me say.</p> <p>4 Q. What do you think the distance was between the</p> <p>5 body and the indentation?</p> <p>6 A. I didn't measure it, like I say. But I could</p> <p>7 give you a guess on my opinion. Probably 5 to 7 feet,</p> <p>8 maybe 8 feet, something like that, 5 feet.</p> <p>9 Q. You know what evidence markers are, don't you?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Sometimes those are used in crime scenes to</p> <p>12 locate spent casings and spent cartridges and things</p> <p>13 like that, right?</p> <p>14 A. Correct.</p> <p>15 Q. Did anybody have any type of evidence markers</p> <p>16 out at this scene that day?</p> <p>17 A. Yes.</p> <p>18 Q. Were they used to show the location of certain</p> <p>19 items of interest?</p> <p>20 A. Yes. At certain times during that crime scene</p> <p>21 investigation, yes.</p> <p>22 Q. I'm showing you now State's Exhibit No. 62.</p> <p>23 And would that photo reflect where the indentation was</p> <p>24 located that you told us about?</p> <p>25 A. That photo wouldn't be showing that, no.</p>	<p style="text-align: right;">117</p> <p>1 someone's footprint as they approached the scene or not?</p> <p>2 A. I have no idea.</p> <p>3 Q. You really don't know whether it's connected to</p> <p>4 the scene or not, do you?</p> <p>5 A. I do not, no.</p> <p>6 Q. But to be careful in the crime scene, you did</p> <p>7 note it?</p> <p>8 A. It was noted to me, actually.</p> <p>9 Q. And at that point in time, and I'm kind of</p> <p>10 talking about all the Galveston Police Department, but</p> <p>11 you also, but at that time there was no knowledge as to</p> <p>12 the identity of this child, correct?</p> <p>13 A. At the time I was there?</p> <p>14 Q. Yes, sir.</p> <p>15 A. No, there was no identity.</p> <p>16 Q. And there was no real information at that time</p> <p>17 as to how the child had gotten there; is that right?</p> <p>18 A. Correct.</p> <p>19 Q. About the only thing that you would be able to</p> <p>20 tell, and this really was going to be probably the</p> <p>21 Medical Examiner, was to have that person, him or her,</p> <p>22 have an opinion as to how long the baby had been there.</p> <p>23 And that would be later based on probably some medical</p> <p>24 opinion that they might have, correct?</p> <p>25 A. To an exact time of death, you're saying?</p>

<p style="text-align: right;">118</p> <p>1 Q. Yes, sir.</p> <p>2 A. That would come from the Medical Examiner's</p> <p>3 Office.</p> <p>4 Q. How long do you think that you were at the</p> <p>5 scene, Sergeant Kershaw?</p> <p>6 A. Hour and a half or so, I guess. Hour, hour and</p> <p>7 a half. I didn't really keep track.</p> <p>8 Q. And your report doesn't indicate an actual time</p> <p>9 that you were there, does it?</p> <p>10 A. Yes. It indicates what time I received the</p> <p>11 call and soon after I got there -- or heard the call</p> <p>12 over the radio and left.</p> <p>13 Q. Okay. I'm sorry. It doesn't indicate when you</p> <p>14 would have departed the scene, does it?</p> <p>15 A. No, it doesn't. I don't think it does.</p> <p>16 Q. But your recollection is that it was about an</p> <p>17 hour or two or hour and a half?</p> <p>18 A. Something like that, I guess.</p> <p>19 Q. And the things that I've told this jury about</p> <p>20 both during direct and during my cross as well are all</p> <p>21 the things that you did in this case, correct? In other</p> <p>22 words, you were not involved in interviewing any</p> <p>23 witnesses, were you?</p> <p>24 A. No, I was not.</p> <p>25 Q. And that includes when you got back to the</p>	<p style="text-align: right;">120</p> <p>1 one of the photos. On the outside of the tape I</p> <p>2 remember seeing another sergeant.</p> <p>3 Q. How many total officers -- again, this is an</p> <p>4 estimate, do you think were present?</p> <p>5 A. I'm not sure. Probably half dozen or so.</p> <p>6 Including supervisors, not just officers.</p> <p>7 Q. A half a dozen in addition to the five or six</p> <p>8 we saw in that one paragraph?</p> <p>9 A. Probably a couple more than that. Some of</p> <p>10 those aren't -- in other words, some are ID and all</p> <p>11 that. It depends on what you're -- I thought you meant</p> <p>12 uniformed officers when you asked the question.</p> <p>13 Q. I was going to ask about uniformed officers,</p> <p>14 but I didn't mean to ask for any officers that may have</p> <p>15 been present, uniformed or otherwise. What number would</p> <p>16 that have been?</p> <p>17 A. I didn't count them. I can just guess if you</p> <p>18 want me to.</p> <p>19 Q. What's your best recollection?</p> <p>20 A. Best recollection is probably less than ten.</p> <p>21 MR. LOPER: That's all that I have, Judge.</p> <p>22 THE COURT: Ms. Cameron?</p> <p>23 MS. CAMERON: Just briefly, Your Honor.</p> <p>24</p> <p>25</p>
<p style="text-align: right;">119</p> <p>1 police station, which presumably you went back to</p> <p>2 eventually that day, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And although there was other work being done on</p> <p>5 this case, you weren't involved in terms of</p> <p>6 investigations or computer research or traveling to any</p> <p>7 other scenes; is that correct?</p> <p>8 A. No, I was not.</p> <p>9 Q. Okay. The time that you were out there in the</p> <p>10 hour to hour and a half that you were there, and you</p> <p>11 listed for us the names of some of the officers that</p> <p>12 were there and we've had photographs to identify them,</p> <p>13 but were there other officers there present around the</p> <p>14 crime scene other than the ones you told us about?</p> <p>15 A. Yes. I can remember several on the outside of</p> <p>16 the tape. Don't -- I can't remember exactly what time</p> <p>17 they may have gotten there, though. But there were</p> <p>18 other officers and personnel that arrived.</p> <p>19 Q. Were these patrol officers? Were they</p> <p>20 investigators, detectives?</p> <p>21 A. I think both. One was another patrol</p> <p>22 supervisor that I remember that arrived.</p> <p>23 Q. Was that Lieutenant Trevino?</p> <p>24 A. No. He -- well, he was a supervisor, but</p> <p>25 that's not who I was talking about. He's actually in</p>	<p style="text-align: right;">121</p> <p>1 FURTHER DIRECT EXAMINATION</p> <p>2 BY MS. CAMERON:</p> <p>3 Q. Sergeant Kershaw, you were talking about</p> <p>4 lividity and rigor mortis. Is there anything in your</p> <p>5 experience that we didn't bring out in front of the</p> <p>6 jury, any of your experience as a police officer that</p> <p>7 you have in addition to being on patrol?</p> <p>8 A. Yes, there is.</p> <p>9 Q. Can you share that with the jury?</p> <p>10 A. Prior to being a day watch supervisor, I spent</p> <p>11 nine and a half years as a Homicide, Bank Robbery, Major</p> <p>12 Crimes for the City of Galveston.</p> <p>13 Q. Can you approximate how many homicide</p> <p>14 investigations you might have been involved in?</p> <p>15 A. Involved in, probably a dozen or more.</p> <p>16 Assigned to me, probably four or five maybe. But I was</p> <p>17 involved in others that I wasn't assigned to.</p> <p>18 MS. CAMERON: That's all I have, Your</p> <p>19 Honor.</p> <p>20 MR. LOPER: Nothing further, Judge.</p> <p>21 THE COURT: May this witness be excused?</p> <p>22 MS. CAMERON: Yes, Your Honor.</p> <p>23 THE COURT: Thank you, Sergeant.</p> <p>24 MS. CAMERON: Prior to calling my next</p> <p>25 witness, I would like to tender to opposing counsel</p>

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<p style="text-align: right;">122</p> <p>1 State's Exhibit No. 75, offer it into evidence and</p> <p>2 publish portions of it.</p> <p>3 MR. LOPER: No objections.</p> <p>4 THE COURT: State's Exhibit No. 75 is</p> <p>5 admitted.</p> <p>6 (State's Exhibit No. 75 admitted)</p> <p>7 MS. CAMERON: If I may publish portions of</p> <p>8 this?</p> <p>9 THE COURT: You may.</p> <p>10 MS. CAMERON: State's Exhibit No. 75,</p> <p>11 which are business records from the Galveston Area</p> <p>12 Ambulance Authority. Provider, Galveston EMS. Pick up</p> <p>13 location, Cherry Hill. Address, 100 Seawall. Receive,</p> <p>14 9:01. Dispatch, 9:01. In route, 9:02. At scene, 9:05.</p> <p>15 9:06, vital signs assessed. Blood pressure, zero.</p> <p>16 Pulse, zero. Respiratory, zero. Level of</p> <p>17 consciousness, unresponsive. 9:06, head to toe</p> <p>18 assessment.</p> <p>19 Narrative: GEMS Medic No. 1 arrived for a</p> <p>20 possible DOS. Fire department first responders reported</p> <p>21 that a child was found and that no one had touched the</p> <p>22 body or interfered with the scene. Examination of the</p> <p>23 scene found an approximately three- to six-month-old</p> <p>24 child laying prone on ground wearing only a diaper. The</p> <p>25 child was found laying approximately 15 to 20 feet off</p>	<p style="text-align: right;">124</p> <p>1 S-c-h-w-a-r-t-z.</p> <p>2 THE COURT: You may proceed.</p> <p>3 MS. CAMERON: Thank you, Your Honor.</p> <p>4</p> <p>5 JEREMY SCHWARTZ,</p> <p>6 having been previously duly sworn, testified as follows:</p> <p>7 DIRECT EXAMINATION</p> <p>8 BY MS. CAMERON:</p> <p>9 Q. Please introduce yourself to the ladies and</p> <p>10 gentlemen of the jury.</p> <p>11 A. Good afternoon. My name is Jeremy Schwartz.</p> <p>12 I'm a Special Agent with the FBI.</p> <p>13 Q. Can you give the jury the benefit of your</p> <p>14 training and experience as a police officer and now as a</p> <p>15 special agent?</p> <p>16 A. Yes, ma'am. I began my career in 2008. I was</p> <p>17 hired with the Galveston Police Department in May of</p> <p>18 2008. Prior to that, I attended Alvin Community</p> <p>19 College. Got my peace officers license and was accepted</p> <p>20 here with the Galveston Police Department. I began my</p> <p>21 career as most of us do, as a patrol officer and moved</p> <p>22 my way up to the bicycle patrol division, which sounds</p> <p>23 silly, but it's actually a step up. From there I became</p> <p>24 a member of the canine division for several years. And</p> <p>25 after about five years in my career here at the police</p>
<p style="text-align: right;">123</p> <p>1 of the sidewalk on the grass area close to a telephone</p> <p>2 pole. A 2- to 3-inch diameter depression that was</p> <p>3 almost approximately 1 inch in depth was noted to the</p> <p>4 left parietal region of the skull.</p> <p>5 The patient's face was turned to the left</p> <p>6 with partial view of left side of face. There were</p> <p>7 abrasions to the left side of face with no signs of</p> <p>8 heavy breathing -- heavy bleeding. The patient had a</p> <p>9 pale ashen appearance in color and had ants covering the</p> <p>10 body. Closer examination by only paramedic David Smith</p> <p>11 found the patient to be cold to the touch when checking</p> <p>12 the pulse on the bronchial side of the left arm. He</p> <p>13 also noted that the patient was rigored with full muscle</p> <p>14 rigidity.</p> <p>15 No further examination was performed.</p> <p>16 Fire department first responders covered the body with a</p> <p>17 white sheet and the scene was turned over to the</p> <p>18 Galveston PD. GEMS Medic 1 returned to service without</p> <p>19 incident. We were later informed by GPD that the child</p> <p>20 was male and no identification was available as of yet.</p> <p>21 Your Honor, at this time the State would</p> <p>22 call Special Agent Jeremy Schwartz.</p> <p>23 THE COURT: Thank you. If you will have a</p> <p>24 seat and give your full name to the court reporter.</p> <p>25 THE WITNESS: Jeremy Schwartz,</p>	<p style="text-align: right;">125</p> <p>1 department, I was promoted to Sergeant. I ran the</p> <p>2 evening watch patrol division for several years until I</p> <p>3 was promoted up to detective with the Galveston Police</p> <p>4 Department.</p> <p>5 Q. Unless I heard you wrong, which is quite</p> <p>6 possible, I think you started with GPD, the Galveston</p> <p>7 Police Department, in May, 2008. Would it have been ten</p> <p>8 years before that or --</p> <p>9 A. I'm sorry. Did I say 2008? That's when I</p> <p>10 left, May, 2008. I apologize. Correct. May of 1998 is</p> <p>11 when I started my career. May of 2008 is when I</p> <p>12 resigned to take the position with the FBI.</p> <p>13 Q. All right. So, in 1998 when you started with</p> <p>14 the Galveston Police Department, did you go to any kind</p> <p>15 of academy or schooling to become a certified peace</p> <p>16 officer?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. And can you describe that to the jury?</p> <p>19 A. Sure. The basic school is through Alvin</p> <p>20 Community College. A lot of officers at the time we</p> <p>21 would pay our own way to go through schooling.</p> <p>22 Basically do several months worth of night watch</p> <p>23 schooling where you learn all the basic ideas of being a</p> <p>24 police officer, investigations and such. Once you get</p> <p>25 hired on by a police department, you continue your</p>

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<p style="text-align: right;">126</p> <p>1 education by doing in-service courses and stuff like</p> <p>2 that, learn more and more detailed stuff about being a</p> <p>3 police officer.</p> <p>4 Q. And aside from your academy training, can you</p> <p>5 share with the jury what your formal education is?</p> <p>6 A. Sure. I became a master peace officer right</p> <p>7 before I left, which you have to have so many certain</p> <p>8 hours with your training as well as years in service. I</p> <p>9 also attended college while I was a police officer. And</p> <p>10 just prior to leaving the police department, I actually</p> <p>11 got my Master's Degree in strategic leadership and</p> <p>12 business.</p> <p>13 Q. And your undergraduate degree was --</p> <p>14 A. It's an organizational leadership, which is</p> <p>15 also in business as well.</p> <p>16 Q. And you said that you started with the FBI.</p> <p>17 Would that be in May of 2008?</p> <p>18 A. I left in May of 2008. I took one week off and</p> <p>19 began my 21-week academy with the FBI in June of 2008.</p> <p>20 Q. Can you share with them just briefly, I guess,</p> <p>21 that would be in Quantico?</p> <p>22 A. That's correct.</p> <p>23 Q. Can you tell them a little bit about what</p> <p>24 training is involved in being an FBI agent?</p> <p>25 A. Sure. With the FBI it's similar to police work</p>	<p style="text-align: right;">128</p> <p>1 Police Department back then.</p> <p>2 Q. And what were your duties and assignments as a</p> <p>3 detective sergeant with the Galveston Police Department?</p> <p>4 A. My assignment was -- as a detective I was</p> <p>5 assigned to major cases which involves anything from</p> <p>6 homicides to major assaults and robberies.</p> <p>7 Q. At that time do you know approximately how many</p> <p>8 homicides you would have been involved in either</p> <p>9 assisting with or investigating?</p> <p>10 A. In my ten-year career, I couldn't tell you.</p> <p>11 There was many because I was a patrol sergeant. One of</p> <p>12 our first responsibilities are to go out to the scene</p> <p>13 and help organize everything out there, also. So, I</p> <p>14 probably -- I mean, I couldn't tell you. A couple dozen</p> <p>15 maybe in my ten years.</p> <p>16 Q. So, on January 29th, 2008, can you tell the</p> <p>17 jury what initially got your attention to the</p> <p>18 investigation of an infant that had been found at the</p> <p>19 Cherry Hill location?</p> <p>20 A. Sure. On that date I was working. We worked</p> <p>21 normal business hours, 8:00 to 4:00, that kind of thing.</p> <p>22 And I actually heard a broadcast over the radio of a</p> <p>23 call out on the east end that involved the possible</p> <p>24 deceased child. Since it was normal business hours and</p> <p>25 not nighttime where we would have somebody on call, I</p>
<p style="text-align: right;">127</p> <p>1 only our investigations change from State crimes to</p> <p>2 Federal laws. The academy in Quantico is 21 very long</p> <p>3 weeks where we learn everything from how to write a</p> <p>4 report to working crime scenes to turning in evidence</p> <p>5 and basically learning how to work long-term</p> <p>6 investigations.</p> <p>7 Q. And currently where are you assigned?</p> <p>8 A. I'm assigned in Lake Havasu City, Arizona,</p> <p>9 which is a very small patch of Arizona in the northwest</p> <p>10 corner of Arizona, about two hours south of Las Vegas.</p> <p>11 Q. And your duties and responsibilities as an FBI</p> <p>12 agent, what do they consist of?</p> <p>13 A. I'm assigned to what's called a VCMO, a squad</p> <p>14 which stands for Violent Crimes and Major Offenders. We</p> <p>15 generally work crimes that occur on the Indian</p> <p>16 reservations. I'm located -- there's several Indian</p> <p>17 reservations around us. And any major crimes that</p> <p>18 happen out there, whether it's assaults or homicides,</p> <p>19 the FBI comes in and works with the tribal police and</p> <p>20 actually prosecutes those cases Federally because it's</p> <p>21 all Federal land.</p> <p>22 Q. I want to direct your attention back to January</p> <p>23 29th of 2008. Can you share with the jury what your</p> <p>24 assignment was at that time?</p> <p>25 A. I was a detective sergeant with the Galveston</p>	<p style="text-align: right;">129</p> <p>1 just volunteered to go out there to assist to determine</p> <p>2 what was going on.</p> <p>3 Q. Do you recall approximately what time you got</p> <p>4 to the location?</p> <p>5 A. Right around 9:15, 9:20 I believe is when I</p> <p>6 heard the call and I was there shortly after that.</p> <p>7 Q. When you got to the location, who was present</p> <p>8 at the scene?</p> <p>9 A. There were a few officers there including</p> <p>10 Sergeant Luck, Sergeant Kershaw, I believe Lieutenant</p> <p>11 Alvarez was there and also Lieutenant Trevino who was</p> <p>12 our -- my supervisor for CID actually arrived at the</p> <p>13 same time I did.</p> <p>14 Q. And what actions did you take when you arrived</p> <p>15 there?</p> <p>16 A. Initially what I did was just kind of assess</p> <p>17 the scene and talk to some of the officers that were out</p> <p>18 there just to determine what we had. During my drive</p> <p>19 out there is when I heard over the radio also that EMS</p> <p>20 had already been to the scene and had confirmed that</p> <p>21 there was a child that was dead out there.</p> <p>22 Q. When you say, "assess the scene," explain to</p> <p>23 the jury if you walk the perimeter or if you saw the</p> <p>24 child or what it is that you did to assess the scene.</p> <p>25 A. Initially what I did was make sure that</p>

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<p style="text-align: right;">130</p> <p>1 everybody that was out there belonged out there. You</p> <p>2 know, a lot of times when you see -- when people see a</p> <p>3 bunch of police cars, you get people that want to stop</p> <p>4 and see what's going on. So, once I made sure that</p> <p>5 everybody out there belonged there, I set up crime scene</p> <p>6 tape about as far around as I could get. When I had</p> <p>7 gotten there, there was just a sheet that was covering</p> <p>8 the baby. So, I couldn't actually see him at first.</p> <p>9 Initially my job is to make sure that the</p> <p>10 pieces are moving in order, that we're getting our</p> <p>11 identification officers out there in order to process</p> <p>12 the scene, interviews are being conducted that need to</p> <p>13 be conducted and just generally making sure that the</p> <p>14 scene is secure out there.</p> <p>15 Q. Were you familiar with that particular location</p> <p>16 at Cherry Hill?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. Had you ever worked crime scene investigations</p> <p>19 at that location?</p> <p>20 A. I have, correct.</p> <p>21 Q. And in the early morning hours, say,</p> <p>22 approximately from 4:00 in the morning until 6:00 in the</p> <p>23 morning, can you describe to the jury, is there a lot of</p> <p>24 traffic out there? Would you describe it as desolate or</p> <p>25 high traffic?</p>	<p style="text-align: right;">132</p> <p>1 Q. So, at the time you arrived there, was the</p> <p>2 infant visible?</p> <p>3 A. No, ma'am.</p> <p>4 Q. And describe what it is that you were able to</p> <p>5 see before Officer Pena got there.</p> <p>6 A. Sure. Before I -- before Officer Pena got</p> <p>7 there, I stood up on the concrete part before going onto</p> <p>8 the grass. From there you could see a white sheet. And</p> <p>9 again, the officers that were there told me that the</p> <p>10 baby was laying under the sheet. And further beyond</p> <p>11 that you could see a baby carrier down at the bottom of</p> <p>12 the hill.</p> <p>13 Q. And when Officer Pena got there, were you able</p> <p>14 to then view the child?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Can you describe for the jury what it is that</p> <p>17 you saw when you were able to view the infant?</p> <p>18 A. Of course. Once Officer Pena arrived there, we</p> <p>19 had the sheet lifted up so that we could, you know, view</p> <p>20 the child. The baby was laying on his stomach, but he</p> <p>21 wasn't exactly face down. He was laying on his stomach</p> <p>22 but his head was turned to the side so you could</p> <p>23 actually see his face. Originally, at that point you</p> <p>24 can't really tell whether it's a male or a female. You</p> <p>25 could see -- I mean, blatantly obvious you could see</p>
<p style="text-align: right;">131</p> <p>1 A. It depends on the day of the week. Obviously</p> <p>2 Cherry Hill got its name for a reason. People like to</p> <p>3 park out there in the middle of the night, whether</p> <p>4 they're young kids getting away from their parents doing</p> <p>5 whatever in their cars. Sometimes you may have several</p> <p>6 cars out there.</p> <p>7 When I first started with the department, it</p> <p>8 was a big car racing extravaganza out there until</p> <p>9 somebody drove off the seawall and died and we were very</p> <p>10 strenuous about making sure that people weren't racing</p> <p>11 out there anymore. So, it depends on the day of the</p> <p>12 week. Sometimes there's absolutely nobody out there and</p> <p>13 sometimes, you know, 2:00 or 3:00 in the morning, you go</p> <p>14 by and see a couple cars parked up on the hill up there.</p> <p>15 Q. Now, at the time that you're assessing the</p> <p>16 scene and you're putting the crime scene tape up, can</p> <p>17 you tell the jury, is Officer Pena there from the crime</p> <p>18 scene unit?</p> <p>19 A. When I first arrived, Officer Pena was not</p> <p>20 there. I stood back on the scene. He arrived there</p> <p>21 pretty shortly after. I have the time noted in my</p> <p>22 report if you need me to look back at what time it was.</p> <p>23 But Officer Pena wasn't there at the very beginning.</p> <p>24 So, I waited until he got there before I went further</p> <p>25 into the scene.</p>	<p style="text-align: right;">133</p> <p>1 that there was some trauma to the child's head, which</p> <p>2 was noted by all of us out there. You could also see</p> <p>3 some small abrasions and small little cuts and stuff on</p> <p>4 the side of his face as well.</p> <p>5 Q. Now, were you touching the infant in any way?</p> <p>6 Were you handling the child?</p> <p>7 A. No, ma'am.</p> <p>8 Q. And why is that?</p> <p>9 A. That's the job for my identification officers</p> <p>10 to do. The fewer people we can have actually touching</p> <p>11 the child, the better. My job is to just view what's</p> <p>12 going on and pay attention and note whatever</p> <p>13 observations I can make on there as well.</p> <p>14 Q. In your report I think there was something</p> <p>15 noted about abrasions. Can you describe for the jury</p> <p>16 what it is that you saw and where that was on the</p> <p>17 infant's face?</p> <p>18 A. It was on the side of his face. They said he</p> <p>19 was laying on his stomach, but his head was turned</p> <p>20 facing to the left. So, you could see the left side of</p> <p>21 his face. And they just looked like little tiny</p> <p>22 individual red abrasions on there almost. Almost like a</p> <p>23 scuff mark if you fell on concrete and injured your</p> <p>24 knee, you would get little -- individual little marks on</p> <p>25 there. That's what you could see on his face in</p>

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<p style="text-align: right;">134</p> <p>1 addition to the indentation on his head.</p> <p>2 Q. What, if anything, did you note about the</p> <p>3 infant's skull?</p> <p>4 A. The indentation was one of the first things I</p> <p>5 noticed. It was, I guess -- it was very obvious that it</p> <p>6 was disformed on the top of his head. Also I noted on</p> <p>7 the back of his head which was visible because he's</p> <p>8 facing to the left and you can see the whole side on the</p> <p>9 back, I noticed that there was a very distinct mark on</p> <p>10 the back of his head. Almost looked like a little</p> <p>11 square on the back of his head. I'd say probably a</p> <p>12 half-inch-by-half-inch square red mark on the back of</p> <p>13 his head.</p> <p>14 MS. CAMERON: If I may approach the</p> <p>15 witness, Your Honor?</p> <p>16 THE COURT: You may.</p> <p>17 MS. CAMERON: If I may show, Your Honor,</p> <p>18 what's in evidence as State's Exhibit No. 66?</p> <p>19 THE COURT: You may.</p> <p>20 Q. (BY MS. CAMERON) Now, Special Agent, I'm</p> <p>21 showing you what's in evidence now as State's Exhibit</p> <p>22 No. 66. And you should have a laser pointer up there.</p> <p>23 If you can show the jury what, if anything, that you</p> <p>24 noted that you just described to the jury.</p> <p>25 A. Yes, ma'am. If you look up at the top here,</p>	<p style="text-align: right;">136</p> <p>1 do you have any idea who this infant is, what the</p> <p>2 child's name is?</p> <p>3 A. No, ma'am.</p> <p>4 Q. Do you have any suspects at this point?</p> <p>5 A. No, ma'am, not at all.</p> <p>6 Q. Do you have any vehicles that would have been</p> <p>7 associated with the crime from anybody that you could</p> <p>8 have talked to out at that area?</p> <p>9 A. No, ma'am, not when we were first out there,</p> <p>10 no.</p> <p>11 Q. So, after Officer Pena gets out there, are you</p> <p>12 able to walk around and see anything in addition to the</p> <p>13 infant's body? Did you see a car seat out there?</p> <p>14 A. I did. And again, I was able to see the car</p> <p>15 seat from the roadway before Officer Pena got out there.</p> <p>16 Q. Did you get up close enough to see what the</p> <p>17 brand name was on the car seat and what kind of pattern</p> <p>18 it had on it?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. What was it?</p> <p>21 A. It was an Evenflo brand car seat.</p> <p>22 Q. And in addition to that, was the infant -- what</p> <p>23 was the infant wearing?</p> <p>24 A. The only thing he had on was a diaper. He had</p> <p>25 no shirt, no pants.</p>
<p style="text-align: right;">135</p> <p>1 this is -- from this angle, I mean, it's still pretty</p> <p>2 obvious, but you can see that the -- there's misshapen</p> <p>3 to his head here as opposed to being round. This side</p> <p>4 of the head you can see how the head is still round over</p> <p>5 here and this side has an indentation. The red markings</p> <p>6 that I was referring to are these little squares back</p> <p>7 here which are very visible, I mean, even in this</p> <p>8 picture. And in person it was even more vibrant. These</p> <p>9 little square marks really stood out.</p> <p>10 Q. Thank you, sir.</p> <p>11 Now, as far as your responsibilities at the</p> <p>12 scene as the detective sergeant, can you tell the jury</p> <p>13 if this was to be your case from beginning to end? Were</p> <p>14 you the supervisor at the scene, so to speak?</p> <p>15 A. Well, we would call it the lead detective.</p> <p>16 The case was assigned to me. As I said, Lieutenant</p> <p>17 Trevino came out there and I believe Captain Benavidez</p> <p>18 was out there as well. They're in charge of the</p> <p>19 Detective Division. So, they make the decision on who</p> <p>20 gets assigned cases. As I said earlier, I had gone out</p> <p>21 there just in case they needed a detective out there</p> <p>22 before we even knew there was actually a deceased baby</p> <p>23 out there. And they assigned me to handle the case as</p> <p>24 the lead detective.</p> <p>25 Q. So, at the time that you're out at the scene,</p>	<p style="text-align: right;">137</p> <p>1 Q. Were you able to determine what particular type</p> <p>2 of diaper it was and if there was any kind of pattern on</p> <p>3 there?</p> <p>4 A. Yes, ma'am. They turned out to be Blue's Clues</p> <p>5 patterned diapers.</p> <p>6 Q. So, other than making a note of the type of</p> <p>7 diaper and this Evenflo, the car seat that was out</p> <p>8 there, did you have any other clues to the child's</p> <p>9 identity?</p> <p>10 A. To his identity, no, ma'am.</p> <p>11 Q. Did you also see a little blue sock out there?</p> <p>12 A. Yes, ma'am, I did.</p> <p>13 Q. How long approximately were you out at the</p> <p>14 scene?</p> <p>15 A. It was a couple of hours, I would say. I got</p> <p>16 out there just shortly after -- I guess -- I believe the</p> <p>17 call was about 9:20. I was out there for a few hours,</p> <p>18 maybe two hours.</p> <p>19 Q. So, in addition to Mr. And Ms. Jesse Zaro, was</p> <p>20 there anyone else that you-all had to get statements</p> <p>21 from at this time?</p> <p>22 A. No, ma'am.</p> <p>23 Q. So, tell the jury, when you left the scene,</p> <p>24 where is it that you went or what did you do next in</p> <p>25 your investigation.</p>

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<p style="text-align: right;">138</p> <p>1 A. Originally we had gone to the station but we 2 planned to go to the Medical Examiner's Office in order 3 to view an autopsy. At that time, you know, part of our 4 goal is -- the first thing we want to do is identify the 5 child. So, I did things like call our dispatch to see 6 if we had any missing children reports and such just in 7 an effort to try to determine who the child was. 8 Q. Tell the jury, did you have any conversations 9 with Officer Pena or Renee Ochoa about how you-all might 10 develop a photograph that would be suitable to perhaps 11 give out to the media so that you could maybe put it on 12 TV or do something to try to identify who that child 13 was? 14 A. Yes, ma'am. Those conversations started pretty 15 early because, again, our number one goal is to get the 16 child identified. That's where our investigation has to 17 start. Because of the injuries to his face and the 18 indentation on his head, we wanted to do things as 19 easily for the public as we could so that we didn't -- 20 the last thing we want to do is post that picture on the 21 news and say, "Is this your child," because it obviously 22 -- I mean, it's not very kind to do. So -- 23 MR. BOURQUE: Objection, nonresponsive. 24 THE COURT: Ask another question, please. 25 Q. (BY MS. CAMERON) So, did you-all try to</p>	<p style="text-align: right;">140</p> <p>1 jury what it is that you did? 2 A. Sure. We contacted Caren Kohberger by 3 telephone. Identified ourselves -- myself and Sergeant 4 Almendarez as investigators with the police department 5 down here and asked her to remain at her home so we 6 could come speak to her. 7 Q. Now, Sergeant Almendarez, would that be 8 Sergeant Annie Almendarez? 9 A. Yes, ma'am. 10 Q. And where was she assigned at that time? 11 A. At that time she was the sergeant in charge of 12 the Juvenile Division. 13 Q. And what was to be her responsibilities in this 14 investigation? 15 A. She was basically a cold case agent -- a 16 co-detective. So, basically we have more than one 17 person that attempts to work on major cases like this in 18 case, you know, two heads are better than one. 19 Q. Do you recall approximately when it was that 20 you got that call from Florence, the investigator from 21 the ME's Office? 22 A. The exact time? No, I do not recall that, 23 ma'am. 24 Q. Do you recall approximately when it was that 25 you went to a location in Alvin, Texas, in order to meet</p>
<p style="text-align: right;">139</p> <p>1 produce a digital photo of the infant perhaps using the 2 mirror image of the side that wasn't damaged in order to 3 have a suitable photograph to put -- to give to the 4 media? 5 A. Yes, ma'am. We discussed that with Officer 6 Pena who's our ID officer. Our plan was to take a 7 digital photograph of the child's face. And Pena said 8 he would be able to basically do a mirror image of the 9 half of his face that didn't have any injuries to it. 10 And that way the picture would look a little bit -- 11 Q. Now, after you left the Medical Examiner's 12 Office, did you get any clues or get any calls that 13 might give you a tip to what the identity of this infant 14 might be? 15 A. I received a call from the Medical Examiner's 16 Office regarding a Ms. Caren Kohberger who had called 17 the Medical Examiner's Office and stated that she -- 18 MR. BOURQUE: Objection, hearsay. 19 MS. CAMERON: Let me rephrase that. 20 Q. (BY MS. CAMERON) Without going into anything 21 that -- would it have been an Investigator Florence from 22 the ME's Office? 23 A. Yes, ma'am. 24 Q. Without going into anything that he said, after 25 you had that conversation with him, can you tell the</p>	<p style="text-align: right;">141</p> <p>1 with Caren Kohberger? 2 A. It was daylight hours. It was in the 3 afternoon. I'll have to review my notes -- 4 Q. Do you have your report with you? 5 A. Yes, ma'am, I do. 6 Q. Okay. Feel free to review it. 7 A. Okay. 8 THE COURT: Ladies and gentlemen, while 9 he's doing that, why don't you stand up and stretch. 10 Let us know when you're ready, Officer. 11 THE WITNESS: I am ready. 12 THE COURT: Okay. Thank you. Please be 13 seated. 14 And, Ms. Cameron, you may continue. 15 MS. CAMERON: Thank you, Your Honor. 16 Q. (BY MS. CAMERON) Now, first of all, does your 17 report indicate approximately what time it is that you 18 received a call from Investigator Florence from the ME's 19 Office? 20 A. Yes, ma'am. 6:16 p.m -- 16 -- sorry. 21 Military time. 4:16 p.m. I apologize. 22 Q. All right. So, is this then still January 23 29th? 24 A. I believe so, yes, ma'am. I'm sorry. Yes, 25 that's correct.</p>

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<p style="text-align: right;">142</p> <p>1 Q. And then approximately what time was it that</p> <p>2 you arrived at the location in Alvin, Texas?</p> <p>3 A. Forty-five minutes from then.</p> <p>4 Q. When you got there, I'm assuming that you and</p> <p>5 Annie Almendarez -- was there anybody else going with</p> <p>6 you?</p> <p>7 A. No, ma'am.</p> <p>8 Q. And what's the physical address of the location</p> <p>9 you went to?</p> <p>10 A. The address is No. 212 at the -- 1100 Fox</p> <p>11 Meadow Drive in Alvin, Texas.</p> <p>12 Q. Is this a trailer park?</p> <p>13 A. Yes, ma'am, it is.</p> <p>14 Q. And who were you greeted by?</p> <p>15 A. Michele Duarte was in the home as well as Caren</p> <p>16 Kohberger.</p> <p>17 Q. And do you know whose trailer that was?</p> <p>18 A. Michele's.</p> <p>19 Q. And do you know who all was living at that</p> <p>20 trailer?</p> <p>21 A. Yes, ma'am. The people that lived there was</p> <p>22 Michele and her boyfriend, Darrell Nichols. And they</p> <p>23 have four children. Along with Travis Mullis, Caren</p> <p>24 Kohberger and their child, Alijah.</p> <p>25 Q. And did you take the digital photograph with</p>	<p style="text-align: right;">144</p> <p>1 or the father of the baby in a long time. Got some</p> <p>2 basic information and explained to them that we'd like</p> <p>3 to talk to them about the father and the child being</p> <p>4 missing.</p> <p>5 Q. Did you obtain consent to search from Michele</p> <p>6 Duarte?</p> <p>7 A. Yes, ma'am, I did.</p> <p>8 Q. And were you allowed at that time to walk</p> <p>9 through the entire trailer?</p> <p>10 A. Yes, ma'am.</p> <p>11 MS. CAMERON: If I may approach the</p> <p>12 witness, Your Honor?</p> <p>13 THE COURT: You may.</p> <p>14 Q. (BY MS. CAMERON) I'm going to show you what's</p> <p>15 been marked for identification purposes as State's</p> <p>16 Exhibit No. 76. And this is a Google map that shows a</p> <p>17 location at 1100 Fox Meadow Drive, Alvin, Texas. And</p> <p>18 then there's a, I guess a pin at a location that's</p> <p>19 called "Cherry" for Cherry Hill. Can you tell whether</p> <p>20 or not this fairly and accurately shows the location of</p> <p>21 both where you went to the trailer and also the crime</p> <p>22 scene location?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. And I'm going to show you also what's been</p> <p>25 marked for identification purposes as State's Exhibit</p>
<p style="text-align: right;">143</p> <p>1 you or did you have the intent to show them the infant</p> <p>2 for identification there at the trailer?</p> <p>3 A. Originally I believe that we actually had the</p> <p>4 artist's rendition of the -- of Alijah. But the intent</p> <p>5 was not to actually show her the photograph there. Our</p> <p>6 plan was to bring her and Michele back to the station</p> <p>7 and actually do a thorough interview.</p> <p>8 Q. Describe Caren Kohberger for the members of the</p> <p>9 jury. How did she appear when you met with her?</p> <p>10 A. She was very calm. She didn't -- never got</p> <p>11 upset or inquired as to why we were there. I mean, she</p> <p>12 knew that we were there to discuss her child missing</p> <p>13 but, very calm, relaxed.</p> <p>14 Q. Was she cooperative?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Describe Michele Duarte.</p> <p>17 A. The same. Michele was -- Michele had a little</p> <p>18 bit of concern as to why we were there. Obviously was</p> <p>19 aware that Alijah and Travis Mullis had been missing for</p> <p>20 several hours. But, again, very cooperative and willing</p> <p>21 to come to the station and speak with us.</p> <p>22 Q. What was it that you were actually saying to</p> <p>23 them as you come to the trailer?</p> <p>24 A. Originally we just discussed with them that,</p> <p>25 you know, we understand that you haven't seen your child</p>	<p style="text-align: right;">145</p> <p>1 No. 78 through State's Exhibit No. 96. And if you could</p> <p>2 look at those and tell the jury and the Court whether or</p> <p>3 not those fairly and accurately show the location of the</p> <p>4 trailer park in Alvin, Texas, when you went there with</p> <p>5 Annie Almendarez.</p> <p>6 A. Yes, ma'am. They all appear to be the trailer,</p> <p>7 No. 212.</p> <p>8 Q. And who was taking these photographs?</p> <p>9 A. These were taken by the ID officer, Scott Pena.</p> <p>10 Q. So, you told the jury that you had gone out</p> <p>11 there that afternoon with Annie Almendarez. Did you end</p> <p>12 up going out there a second time after consents to</p> <p>13 search were obtained?</p> <p>14 A. Yes, ma'am, that's correct.</p> <p>15 Q. And would this be the second time that you-all</p> <p>16 went to the trailer?</p> <p>17 A. Yes, ma'am. Those all appear to be from</p> <p>18 No. 212.</p> <p>19 Q. And they fairly and accurately show the trailer</p> <p>20 as you saw it that afternoon?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. And State's Exhibit No. 77, do you recognize</p> <p>23 that as the consent to search that was obtained from the</p> <p>24 owner of the trailer, Michele Duarte?</p> <p>25 A. Yes, ma'am.</p>

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<p style="text-align: right;">146</p> <p>1 Q. And is that your signature down there under</p> <p>2 "Witness"?</p> <p>3 A. It is.</p> <p>4 MS. CAMERON: Your Honor, at this time I'm</p> <p>5 going to tender to opposing counsel State's Exhibit</p> <p>6 Nos. 76, 77 and 78 through 96 and offer the same into</p> <p>7 evidence.</p> <p>8 MR. BOURQUE: No objections to State's</p> <p>9 Exhibit Nos. 76 through 96; is that right?</p> <p>10 THE COURT: All right. Those exhibits</p> <p>11 will be admitted.</p> <p>12 (State's Exhibit Nos. 76 through 96 admitted)</p> <p>13 MS. CAMERON: Thank you, Your Honor. If I</p> <p>14 may publish these?</p> <p>15 THE COURT: You may.</p> <p>16 Q. (BY MS. CAMERON) Now, Special Agent Schwartz,</p> <p>17 I'm going to show to the jury State's Exhibit No. 76.</p> <p>18 And there appear to be two drop pins on this. One at</p> <p>19 1100 Fox Meadow. Would that be the location that you</p> <p>20 went to that afternoon to the trailer that was owned by</p> <p>21 Michele Duarte?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. And there appear to be different routes that</p> <p>24 you could take. Are you familiar with the different</p> <p>25 ways that one could go from that trailer location to get</p>	<p style="text-align: right;">148</p> <p>1 and irrelevant.</p> <p>2 Q. (BY MS. CAMERON) Would you have had to have</p> <p>3 gotten a search warrant if you hadn't gotten consent</p> <p>4 from Caren Kohberger and also Michele Duarte?</p> <p>5 MR. BOURQUE: Same objection, Judge.</p> <p>6 THE COURT: Well, this is the State's</p> <p>7 case. I'm going to overrule the objection.</p> <p>8 You may ask the question.</p> <p>9 Q. (BY MS. CAMERON) What was the purpose for</p> <p>10 obtaining consent from the people that lived at that</p> <p>11 location?</p> <p>12 A. If you can't obtain consent from the owner of</p> <p>13 the home, you have to file for a search warrant to get</p> <p>14 into the residence.</p> <p>15 Q. Did you need or get a search warrant after you</p> <p>16 got consent from Caren Kohberger and Michele Duarte?</p> <p>17 A. No, ma'am.</p> <p>18 Q. And down here at the bottom, would that be your</p> <p>19 signature?</p> <p>20 A. Yes, ma'am, second from the bottom.</p> <p>21 Q. State's Exhibit No. 78, if you can explain to</p> <p>22 the jury what we're looking at here.</p> <p>23 A. That would be the front door entrance to</p> <p>24 No. 212.</p> <p>25 Q. State's Exhibit No. 79?</p>
<p style="text-align: right;">147</p> <p>1 to Galveston Island?</p> <p>2 A. I'm familiar with the fastest route.</p> <p>3 Q. Okay. What would the fastest route --</p> <p>4 A. That would be taking --</p> <p>5 MR. BOURQUE: Objection. It's immaterial</p> <p>6 and irrelevant. The route he took would be the only</p> <p>7 relevant --</p> <p>8 MS. CAMERON: We'll move on.</p> <p>9 Q. (BY MS. CAMERON) But within this map does it</p> <p>10 show I-45?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. And what is this blue --</p> <p>13 A. That should be Highway 6.</p> <p>14 Q. Now, can you show the jury from the drop pin at</p> <p>15 1100 Fox Meadow, where is it that you would reference to</p> <p>16 Cherry Hill or the location of the crime scene?</p> <p>17 A. That would be down at the right-hand corner</p> <p>18 here where the other yellow pin is.</p> <p>19 Q. Thank you, sir.</p> <p>20 State's Exhibit No. 77, a consent to search,</p> <p>21 if you had not been able to get a consent to search from</p> <p>22 Caren Kohberger and also from Michele Duarte, can you</p> <p>23 tell the jury what you would have had to have done in</p> <p>24 order to search that trailer?</p> <p>25 MR. BOURQUE: Objection. It's immaterial</p>	<p style="text-align: right;">149</p> <p>1 A. That's a photograph just including the address</p> <p>2 of the trailer.</p> <p>3 Q. Now, when you first went into the trailer, did</p> <p>4 you notice anything that caught your eye as far as a</p> <p>5 stroller?</p> <p>6 A. Yes, ma'am. That was located right there in</p> <p>7 the front, basically the living room, the partition</p> <p>8 between the kitchen and living room.</p> <p>9 Q. If you could use the pointer and show the jury</p> <p>10 what it is that you're referencing and whether or not --</p> <p>11 A. This here is a stroller. And maybe you can</p> <p>12 tell in this picture, but the pattern on that stroller</p> <p>13 was very similar to the pattern of the carrier that we</p> <p>14 saw out there where Alijah was found.</p> <p>15 Q. Was it an Evenflo brand?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. So, are you at all factoring that in as you're</p> <p>18 seeing that when you come into the trailer?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. State's Exhibit No. 81, is this a close-up of</p> <p>21 that stroller?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. And looking at it this way --</p> <p>24 MS. CAMERON: Your Honor, if I may?</p> <p>25 Q. (BY MS. CAMERON) I'd like to put State's</p>

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<p style="text-align: right;">150</p> <p>1 Exhibit No. 70 next to State's Exhibit No. 81. Can you</p> <p>2 tell the jury whether or not you were seeing the</p> <p>3 similarities of the two Evenflo, one being a stroller</p> <p>4 and one being the discarded baby seat that was found at</p> <p>5 Cherry Hill?</p> <p>6 A. Yes, ma'am. Just looking at this area here,</p> <p>7 you could see that they have the same pattern on them</p> <p>8 and they are the same brand.</p> <p>9 Q. State's Exhibit No. 82, is this, again, part of</p> <p>10 the trailer?</p> <p>11 A. Yes, ma'am, it is.</p> <p>12 Q. And do you recognize who this gentleman is?</p> <p>13 A. I do. That's Sergeant Jones.</p> <p>14 Q. And who is this lady that we see in the</p> <p>15 background?</p> <p>16 A. I believe that's Michele Duarte, the owner of</p> <p>17 the residence.</p> <p>18 Q. You believe that is Michele Duarte?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. State's Exhibit No. 83, is this the living room</p> <p>21 area?</p> <p>22 A. Yes, ma'am, it is.</p> <p>23 Q. State's Exhibit No. 84, is this kind of the</p> <p>24 kitchen and -- that goes from the living room area?</p> <p>25 A. Correct. Kitchen, dining room-type area.</p>	<p style="text-align: right;">152</p> <p>1 what we just looked at of the child clothing?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. State's Exhibit No. 92, can you tell the jury</p> <p>4 whether or not there's a small blue sock in that</p> <p>5 picture?</p> <p>6 A. Down there on the bottom right-hand corner is a</p> <p>7 -- it's a blue sock.</p> <p>8 Q. When you were out at the crime scene, had you</p> <p>9 seen a single blue sock?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. State's Exhibit No. 93, what are we looking at</p> <p>12 here?</p> <p>13 A. Those would be the Luvs diapers with the Blue's</p> <p>14 Clues brand pattern.</p> <p>15 Q. Where had you last seen the Blue's Clues</p> <p>16 diaper?</p> <p>17 A. On Baby Alijah.</p> <p>18 Q. At this point you've seen the Evenflo stroller</p> <p>19 with that pattern. You're seeing the Blue's Clues</p> <p>20 diapers. What's going through your mind at this point?</p> <p>21 Do you believe that Caren Kohberger is the mother of the</p> <p>22 child that you had found?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. State's Exhibit No. 94, State's Exhibit</p> <p>25 No. 95, does that appear to be a child bath in there?</p>
<p style="text-align: right;">151</p> <p>1 Q. State's Exhibit No. 85, who is the young woman</p> <p>2 that we're seeing in State's Exhibit No. 85?</p> <p>3 A. That's Alijah's mother, Caren Kohberger.</p> <p>4 Q. State's Exhibit No. 86?</p> <p>5 A. That would be just inside the front entry door</p> <p>6 and looking back towards the back bedrooms.</p> <p>7 Q. State's Exhibit No. 87?</p> <p>8 A. That's taken from the bedroom at the far end</p> <p>9 which is where Caren explained to us that she sleeps</p> <p>10 with Alijah and Travis Mullis.</p> <p>11 MR. BOURQUE: Objection, hearsay.</p> <p>12 THE COURT: Sustained.</p> <p>13 Q. (BY MS. CAMERON) Without going into anything</p> <p>14 that you came to learn by conversations, can you tell</p> <p>15 the jury, did there appear to be two beds in that</p> <p>16 bedroom?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. And did you also find baby items -- State's</p> <p>19 Exhibit No. 88, does this show the two beds, one here</p> <p>20 and then one there?</p> <p>21 A. Yes, ma'am, there's two beds in that picture.</p> <p>22 Q. And State's Exhibit No. 89, is this in the same</p> <p>23 bedroom and showing a lot of child clothing?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. State's Exhibit No. 90, is that a close-up of</p>	<p style="text-align: right;">153</p> <p>1 A. Yes, ma'am.</p> <p>2 Q. Do you know offhand what the ages were of</p> <p>3 Michele Duarte's children? Were any of them infants?</p> <p>4 A. I don't believe any of them were infants, no,</p> <p>5 ma'am.</p> <p>6 Q. State's Exhibit No. 96, did there appear to be</p> <p>7 some paperwork that was located in that bedroom?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Now, was it your responsibility to go through</p> <p>10 and collect evidence and to gather any paperwork or to</p> <p>11 take into your possession any possible evidence?</p> <p>12 A. No, ma'am. I used the identification officers</p> <p>13 to do that.</p> <p>14 Q. So, that would be for Officer Pena?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. State's Exhibit No. 91, did there appear to be</p> <p>17 a little girl's bedroom with some pink curtains or --</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Now, while you're out there, approximately how</p> <p>20 much time did you spend at that location before you left</p> <p>21 to go back to the station?</p> <p>22 A. It was a couple of hours that we were up there.</p> <p>23 Q. And during the time that you were there, did</p> <p>24 you see any photographs of Baby Alijah Mullis?</p> <p>25 A. Yes, ma'am. That was during -- I believe that</p>

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<p style="text-align: right;">154</p> <p>1 was during the first time we first -- before we took</p> <p>2 Caren for her interview.</p> <p>3 Q. Let's talk about that initial time that you're</p> <p>4 there that you see the place, you see the stroller, you</p> <p>5 see the Blue's Clues diaper. You said you didn't show</p> <p>6 any pictures of Alijah, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Tell the jury what, if any, pictures you saw of</p> <p>9 Caren Kohberger's infant.</p> <p>10 A. Caren Kohberger showed me a photograph that she</p> <p>11 said was a pretty recent picture of her child.</p> <p>12 Based on the photograph that she showed me, I believed</p> <p>13 that her child was the same one that we had found on</p> <p>14 Cherry Hill.</p> <p>15 Q. Now, was there anything distinctive about the</p> <p>16 way he looked?</p> <p>17 A. Yes, ma'am. He had a really cool Mohawk.</p> <p>18 Just -- it was a natural cowlick or something, but his</p> <p>19 hair stood straight up in the front. I recall that</p> <p>20 being very distinctive from out there on the scene.</p> <p>21 Q. So, when you're putting that together and</p> <p>22 you're seeing the picture of her infant, are you saying</p> <p>23 anything to her?</p> <p>24 A. Not there at the house, no, ma'am.</p> <p>25 Q. Did you request for them to come back to the</p>	<p style="text-align: right;">156</p> <p>1 A. In an effort to locate the car we needed</p> <p>2 descriptors so we could try to find the car if he was</p> <p>3 out driving around.</p> <p>4 Q. Tell the jury, what is TCIC-NCIC?</p> <p>5 A. Sure. TCIC and NCIC here in Texas, they kind</p> <p>6 of go to the same thing. National Crime Information</p> <p>7 Center, which is the NCIC part of it. And you have the</p> <p>8 Texas part of it. Entries are put into that computer</p> <p>9 for a myriad of things. For people that have warrants</p> <p>10 or stolen cars, we enter that information through our</p> <p>11 dispatchers into the computer system. And that way if</p> <p>12 those cars or people are located in another city or even</p> <p>13 another state, it warns the officers who stop them that</p> <p>14 either the car's been stolen or the person has a</p> <p>15 warrant.</p> <p>16 Q. So, without going into anything that Caren</p> <p>17 Kohberger said to you or anything that was said to you</p> <p>18 by Michele Duarte what, if anything, did you cause to be</p> <p>19 placed into TCIC-NCIC regarding that vehicle and a</p> <p>20 person of interest?</p> <p>21 A. We had both the vehicle entered, which was a</p> <p>22 2002 Hyundai, as well as Travis, AKA T.J. Mullis entered</p> <p>23 into the TCIC-NCIC computer.</p> <p>24 Q. Did you have identifiers on him? Did you have</p> <p>25 a photograph or were you strictly putting a name into</p>
<p style="text-align: right;">155</p> <p>1 station to give a statement?</p> <p>2 A. Yes, ma'am, we did.</p> <p>3 Q. And did they agree to do so?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. Did they go back with you or how did they get</p> <p>6 to the station?</p> <p>7 A. Correct. They did not have their own car.</p> <p>8 So, they rode back with Sergeant Almendarez and I to the</p> <p>9 police station down here.</p> <p>10 Q. Now, at this point did you ask her the name of</p> <p>11 the child?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. Did you ask her the name of the father of the</p> <p>14 child?</p> <p>15 A. Yes, ma'am, I did.</p> <p>16 Q. And who did you believe was the father of that</p> <p>17 infant?</p> <p>18 MR. BOURQUE: Objection. It's based on</p> <p>19 hearsay.</p> <p>20 THE COURT: Sustained.</p> <p>21 Q. (BY MS. CAMERON) Well, let me ask you this:</p> <p>22 Did you get information about Caren Kohberger's vehicle?</p> <p>23 A. Yes, ma'am, I did.</p> <p>24 Q. And what was your purpose for getting</p> <p>25 information about her car?</p>	<p style="text-align: right;">157</p> <p>1 TCIC-NCIC?</p> <p>2 A. Name and date of birth.</p> <p>3 Q. Additionally, did you have a license plate for</p> <p>4 the vehicle?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. And who did you believe that vehicle or did you</p> <p>7 check to see who that vehicle was registered to?</p> <p>8 A. Both Caren and T.J.</p> <p>9 Q. That's your understanding?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. Now, did you actually get a certificate of</p> <p>12 title to know whether or not Travis Mullis was even on</p> <p>13 the title?</p> <p>14 A. No, ma'am.</p> <p>15 Q. Now, after that was entered into the system,</p> <p>16 did you then attend the autopsy?</p> <p>17 A. Yes, ma'am, I did.</p> <p>18 Q. Is that routine for a detective to go to an</p> <p>19 autopsy on a deceased person in a case that you're</p> <p>20 working?</p> <p>21 A. Yes, ma'am, it is.</p> <p>22 Q. And what day do you recall going to the</p> <p>23 autopsy?</p> <p>24 A. I believe the autopsy was done on the --</p> <p>25 January 30th.</p>

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<p style="text-align: right;">158</p> <p>1 Q. So, this is now the second day?</p> <p>2 A. Correct.</p> <p>3 Q. And what is it that you learned or -- well,</p> <p>4 don't go into what would have been told to you by Mambo,</p> <p>5 by Dr. Nobby Mambo, but did you observe for yourself</p> <p>6 whether or not there was any other trauma to this infant</p> <p>7 besides the child's head?</p> <p>8 A. I observed the injury to the head.</p> <p>9 Q. Can you tell the jury whether or not it was</p> <p>10 massive, severe --</p> <p>11 A. I would use the word "severe" trauma to the</p> <p>12 head.</p> <p>13 Q. Did it appear to be the cause of death, if you</p> <p>14 know?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Now, I want to direct your attention to after</p> <p>17 the autopsy and you've now got a name and a car entered</p> <p>18 into the system. Did there come a time when you</p> <p>19 received notice that the Defendant had turned himself in</p> <p>20 at a location?</p> <p>21 A. Yes, ma'am, I did.</p> <p>22 Q. Tell the jury what day and approximately when</p> <p>23 it would have been that you were aware that Travis</p> <p>24 Mullis was located.</p> <p>25 A. That's going to be February 1st. Sometime in</p>	<p style="text-align: right;">160</p> <p>1 Q. And did you have ongoing conversations with</p> <p>2 Detective Hesser? Did you end up giving him whatever</p> <p>3 information you had down here?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. Did you let him know where the body was found?</p> <p>6 A. Yes, ma'am, I did.</p> <p>7 Q. Do you recall what, if any, other information</p> <p>8 you gave to Detective Hesser?</p> <p>9 A. Basically the date and location and who we</p> <p>10 believed the suspect was.</p> <p>11 Q. Well, going back to the location, that location</p> <p>12 where the infant was found, is that a location in</p> <p>13 Galveston County, Texas?</p> <p>14 A. Yes, ma'am, it is.</p> <p>15 Q. So, did you give him any maps or anything or</p> <p>16 have those sent or just a general location?</p> <p>17 A. Just a general location.</p> <p>18 Q. Now, at some point did you believe that they</p> <p>19 were able to obtain a written statement from the</p> <p>20 Defendant?</p> <p>21 A. Yes, ma'am, that same day.</p> <p>22 Q. So, was there a period of time after you said,</p> <p>23 "Talk to him," that it was a matter of then waiting to</p> <p>24 find out what they were going to get from the Defendant?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">159</p> <p>1 the afternoon I learned that Travis Mullis had turned</p> <p>2 himself in in Philadelphia.</p> <p>3 Q. So, who did you actually communicate with?</p> <p>4 A. Detective Hesser with the Philadelphia Police</p> <p>5 Department Homicide Unit.</p> <p>6 Q. Now, are there times when you might say, "Hold</p> <p>7 off on interviewing a suspect. We'll be right there and</p> <p>8 we'll do the interviewing?"</p> <p>9 A. Yes, ma'am. Those times would be if the person</p> <p>10 is caught somewhere locally where I as the lead</p> <p>11 detective can actually go conduct the interview, I would</p> <p>12 do that myself. This being all the way up in</p> <p>13 Philadelphia, it's a little difficult to get a plane</p> <p>14 ride up there immediately. I learned if he wanted to</p> <p>15 talk, I would prefer the interview be done immediately.</p> <p>16 Q. So, what, if any, instructions did you give to</p> <p>17 Detective Hesser with the Homicide Division of the</p> <p>18 Philadelphia Police Department?</p> <p>19 A. I requested that he give Travis Mullis a Texas</p> <p>20 Miranda warning as well as the Miranda warning that's</p> <p>21 utilized there in Philadelphia.</p> <p>22 Q. How were you able to give him the Miranda</p> <p>23 warning -- the Texas warnings to the gentleman up in</p> <p>24 Philadelphia?</p> <p>25 A. We had it faxed to his office there.</p>	<p style="text-align: right;">161</p> <p>1 Q. Did you end up getting a fax from Detective</p> <p>2 Hesser that was essentially the Defendant's written</p> <p>3 statement?</p> <p>4 A. Yes, ma'am, I did.</p> <p>5 Q. And do you know how long it took in order for</p> <p>6 you to get this?</p> <p>7 A. I recall the time that I received it, which was</p> <p>8 around 8:40, 8:45, I believe.</p> <p>9 Q. So, do you know approximately how many hours</p> <p>10 had gone by from when you said, "Go ahead and try to</p> <p>11 talk to him. Here are the Texas warnings," and when you</p> <p>12 received a copy of the written statement?</p> <p>13 A. Yes, ma'am. Give me one moment, please. It's</p> <p>14 around 1:50 in the afternoon is when I received a call</p> <p>15 from Detective Hesser. I received the fax, I believe,</p> <p>16 again, it was 8:50 that afternoon.</p> <p>17 Q. And did you review that written statement?</p> <p>18 A. Yes, ma'am, I did.</p> <p>19 Q. Did Annie Almendarez review that, also?</p> <p>20 A. Yes, ma'am.</p> <p>21 MS. CAMERON: If I may approach the</p> <p>22 witness, Your Honor?</p> <p>23 THE COURT: You may.</p> <p>24 Q. (BY MS. CAMERON) Special Agent, I'm going to</p> <p>25 show you what's been marked for identification purposes</p>

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<p style="text-align: right;">162</p> <p>1 as State's Exhibit No. 47. And do you recognize what</p> <p>2 that is?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. And can you tell the jury, after you got the</p> <p>5 statement, what is it that you-all did in order to try</p> <p>6 to make certain that there was a warrant in place for</p> <p>7 the Defendant?</p> <p>8 A. After reading the written statement, we filed</p> <p>9 for a warrant which included this affidavit for the</p> <p>10 arrest of Travis Mullis.</p> <p>11 Q. Were you present when that was signed by a</p> <p>12 magistrate, District Court Judge Lonnie Cox of the 56th</p> <p>13 District Court for Galveston County, Texas?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. And, so, in order for this to be done, was</p> <p>16 there a sworn affidavit by Annie Almendarez that was</p> <p>17 presented to the Judge?</p> <p>18 A. That's correct.</p> <p>19 Q. And did you observe the Judge review that?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. And did he sign that?</p> <p>22 A. Yes, ma'am, he did.</p> <p>23 Q. And at this point did you believe that you-all</p> <p>24 then had an arrest warrant for the Defendant, Travis</p> <p>25 James Mullis, for the offense of capital murder?</p>	<p style="text-align: right;">164</p> <p>1 Q. Did you receive information about what was in</p> <p>2 the contents of that?</p> <p>3 A. Yes, ma'am, I did.</p> <p>4 Q. Now, what was your plan at this point? Did</p> <p>5 you-all have any plans to go up to Philadelphia to</p> <p>6 process the vehicle?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. Did you understand that they had located that</p> <p>9 2002 Hyundai?</p> <p>10 A. Yes, ma'am. I learned that the same time after</p> <p>11 they -- after Travis had turned himself in to the police</p> <p>12 department. Detective Hesser also said that they had</p> <p>13 located the vehicle.</p> <p>14 Q. How soon after he had made his statement did</p> <p>15 you and other Galveston police officers go up to</p> <p>16 Philadelphia, Pennsylvania?</p> <p>17 A. I believe we went up the following day.</p> <p>18 Q. And when you went, who all went?</p> <p>19 A. Myself, Sergeant Almendarez, Scott Pena and</p> <p>20 Sergeant Jones.</p> <p>21 Q. And did you-all have divided responsibilities</p> <p>22 as far as who would be responsible for processing the</p> <p>23 vehicle and what you and Annie Almendarez would be</p> <p>24 responsible to do?</p> <p>25 A. Yes, ma'am. Again, my -- I was assigned -- I</p>
<p style="text-align: right;">163</p> <p>1 A. Yes, ma'am.</p> <p>2 Q. And approximately what time was that signed by</p> <p>3 the Judge?</p> <p>4 A. 9:15 p.m.</p> <p>5 Q. And tell the jury what it was, what action did</p> <p>6 you take after that arrest warrant was signed?</p> <p>7 A. After the arrest warrant was signed, I returned</p> <p>8 back down here to the station and met with our dispatch</p> <p>9 supervisor in order to have the TCIC-NCIC information</p> <p>10 updated to include a capital murder warrant for Travis</p> <p>11 Mullis.</p> <p>12 Q. So, initially there was a hold. Now there was</p> <p>13 a capital murder warrant for him in the system?</p> <p>14 A. That's correct.</p> <p>15 Q. Now, what is your understanding about what is</p> <p>16 now going on with the Defendant in Philadelphia?</p> <p>17 A. After the written statement was done, they were</p> <p>18 going to do a videotaped statement as well.</p> <p>19 Q. Did you have any further communication that</p> <p>20 evening or after you got the capital murder warrant</p> <p>21 signed with Detective Hesser?</p> <p>22 A. Yes, ma'am, after the interview was concluded.</p> <p>23 Q. When you say, "the interview," would that be</p> <p>24 the second interview that was videotaped?</p> <p>25 A. Correct, yes, ma'am.</p>	<p style="text-align: right;">165</p> <p>1 assigned Detective Pena and Sergeant Jones to conduct</p> <p>2 the identification work on the vehicle. And myself and</p> <p>3 Sergeant Almendarez would be able to -- would be free to</p> <p>4 do interviews.</p> <p>5 Q. When you say, "interviews," did you come to</p> <p>6 know whether or not the Maryland area was an area of</p> <p>7 interest or something that -- there might be people in</p> <p>8 that area that you needed to interview?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. And did you and Annie Almendarez go to</p> <p>11 Maryland?</p> <p>12 A. Yes, ma'am, we did.</p> <p>13 Q. And what was your purpose for going anywhere</p> <p>14 that the Defendant might have traveled?</p> <p>15 A. The purpose was to meet with people that he may</p> <p>16 have spoken to during his drive from Texas up to</p> <p>17 Philadelphia.</p> <p>18 Q. Now, after you did your interviews, did you go</p> <p>19 back to Philadelphia to the police department?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. And what is your understanding of what evidence</p> <p>22 was taken possession of?</p> <p>23 A. At the time I recall there was part of a car</p> <p>24 seat that was located in the trunk. Another baby</p> <p>25 blanket was found in the vehicle as well as a B.B. gun</p>

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<p style="text-align: right;">166</p> <p>1 that was found in the car.</p> <p>2 Q. Did you-all get the shoes of the Defendant?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. Did you also get his sweater and the clothing</p> <p>5 that he had on when he was there?</p> <p>6 A. Everything that he was wearing was taken.</p> <p>7 Q. Now, how were you to transport the Defendant</p> <p>8 back?</p> <p>9 A. We had to transport him on a plane.</p> <p>10 Q. And who took custody of the Defendant?</p> <p>11 A. I did, ma'am.</p> <p>12 Q. Can you describe -- first of all, do you see</p> <p>13 the Defendant present in Court today?</p> <p>14 A. Yes, ma'am, I do.</p> <p>15 Q. Can you point to him and describe him by some</p> <p>16 article of clothing that he's wearing?</p> <p>17 A. He's sitting at that table right there in the</p> <p>18 blue tie.</p> <p>19 MS. CAMERON: May the record reflect that</p> <p>20 the witness has identified the Defendant?</p> <p>21 THE COURT: It will.</p> <p>22 Q. (BY MS. CAMERON) Now, when you went up there,</p> <p>23 was this your first time to deal with him, the first</p> <p>24 time to meet him?</p> <p>25 A. Yes, ma'am.</p>	<p style="text-align: right;">168</p> <p>1 A. Was the first word "tearful"?</p> <p>2 Q. Tearful.</p> <p>3 A. No, ma'am, not at all.</p> <p>4 Q. Well, how would you describe his demeanor?</p> <p>5 A. It was very casual. He spoke to me like he'd</p> <p>6 known me for years like a friend, very casual.</p> <p>7 MS. CAMERON: I'll pass the witness.</p> <p>8 Thank you, sir.</p> <p>9 THE COURT: Ladies and gentlemen, we're</p> <p>10 going to go ahead and take a comfort break. I'll call</p> <p>11 you back out in about 15 minutes. Thank you.</p> <p>12 (Break held)</p> <p>13 (Open court, Defendant and jury present)</p> <p>14 THE COURT: Thank you. You may be seated.</p> <p>15 The Defense may cross-examine the witness</p> <p>16 at this time.</p> <p>17 MR. BOURQUE: Thank you, Your Honor.</p> <p>18 CROSS-EXAMINATION</p> <p>19 BY MR. BOURQUE:</p> <p>20 Q. Agent Schwartz, how are you doing this</p> <p>21 afternoon?</p> <p>22 A. Very well, sir. Yourself?</p> <p>23 Q. All right. Very well. Thank you for asking.</p> <p>24 We just talked a little bit outside the</p> <p>25 presence of the jury about State's Exhibit No. 75, which</p>
<p style="text-align: right;">167</p> <p>1 Q. And when was it that you actually first saw and</p> <p>2 got custody of the Defendant?</p> <p>3 A. That would be at the actual airport, at the</p> <p>4 Philadelphia airport substation.</p> <p>5 Q. Now, his clothing was taken into police</p> <p>6 custody. What, if anything, was the Defendant given to</p> <p>7 wear on his way back?</p> <p>8 A. Myself and Almendarez actually went to Wal-Mart</p> <p>9 and purchased a sweatshirt and sweat pants that matched</p> <p>10 as well as some slippers.</p> <p>11 Q. How would you describe his demeanor?</p> <p>12 A. Talkative, chatty, calm, I guess you could say.</p> <p>13 Q. Well, was your intent to reinterview him?</p> <p>14 A. No, ma'am. Not at all.</p> <p>15 Q. And tell the jury why you weren't going to</p> <p>16 reinterview him.</p> <p>17 A. Once he had been to Philadelphia, he had gone</p> <p>18 to his initial appearance. And after that time you're</p> <p>19 provided with your Miranda warning. Philadelphia</p> <p>20 actually advised him not to talk to us. So, we had no</p> <p>21 intentions of reinterviewing him.</p> <p>22 Q. So, did he spontaneously speak to you-all?</p> <p>23 A. Yes, ma'am, several times.</p> <p>24 Q. As far as his demeanor, did he seem tearful,</p> <p>25 upset, crying?</p>	<p style="text-align: right;">169</p> <p>1 is that report --</p> <p>2 MR. BOURQUE: If I may approach, Judge?</p> <p>3 THE COURT: You may.</p> <p>4 Q. (BY MR. BOURQUE) I talked about it and then</p> <p>5 took it away from you.</p> <p>6 A. Yes, sir.</p> <p>7 Q. That's State's Exhibit No. 75. And in State's</p> <p>8 Exhibit No. 75, that's the document where EMS is</p> <p>9 reflecting some of their evaluations when they --</p> <p>10 THE COURT REPORTER: When they what?</p> <p>11 Q. (BY MR. BOURQUE) Got to the scene. Do you</p> <p>12 remember that?</p> <p>13 A. Yes.</p> <p>14 Q. That's the court reporter's way of telling me</p> <p>15 to slow down.</p> <p>16 A. I get that a lot, sir.</p> <p>17 Q. So, in State's Exhibit No. 75, it reflects that</p> <p>18 EMS, when they got to the scene and they checked on the</p> <p>19 baby, they found -- I don't know the exact -- seems like</p> <p>20 the phrase was full-scale muscle rigidity. You see that</p> <p>21 in there?</p> <p>22 A. Yes, sir, I do. Do you want me to read it?</p> <p>23 Q. Yes, sir. That would be great.</p> <p>24 A. "The pt." -- which I'm assuming is patient --</p> <p>25 "was rigored with full muscle rigidity."</p>

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<p style="text-align: right;">170</p> <p>1 Q. Okay. Full muscle rigidity. And just so we're</p> <p>2 clear on this, you didn't actually touch the baby to</p> <p>3 determine whether there was full-scale rigidity or rigor</p> <p>4 mortis or anything else, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Someone else touched the baby?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And does what's reflected in State's Exhibit</p> <p>9 No. 75 concur with what you observed when -- was it</p> <p>10 Kershaw that touched the baby?</p> <p>11 A. I know Pena did for sure.</p> <p>12 Q. Pena did?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Does it support what you saw when Pena touched</p> <p>15 the baby or is it different?</p> <p>16 A. Based on what this report is saying, I'm going</p> <p>17 to say it's different. I'm assuming, but I'm not going</p> <p>18 to make assumptions. Being rigored sounds different</p> <p>19 than not having rigor mortis.</p> <p>20 Q. I mean, those of us who are in the line of work</p> <p>21 that we are, although I'm not an expert in what is and</p> <p>22 is not rigor mortis, it's certainly something that you</p> <p>23 would identify if you saw it?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. And it's not something -- I mean, if you</p>	<p style="text-align: right;">172</p> <p>1 Q. When we're taking -- it appears that you guys</p> <p>2 are notified somewhere around 1:50 p.m. on February 1st</p> <p>3 that Mr. Mullis has, for lack of a better word,</p> <p>4 surrendered to the Philadelphia Police Department. Does</p> <p>5 that sound accurate?</p> <p>6 A. Yes.</p> <p>7 Q. All right. So, that's roughly, give or take</p> <p>8 ten minutes, about 2:00 o'clock in the afternoon?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And at 2:00 o'clock in the afternoon,</p> <p>11 you guys are notified. And then things begin to happen.</p> <p>12 You begin to do the things that you need to do.</p> <p>13 Sergeant Almen --</p> <p>14 A. Almendarez.</p> <p>15 Q. Almendarez begins to do the things that she</p> <p>16 needs to do to assist you so that you can get the wheels</p> <p>17 moving in the right direction, correct?</p> <p>18 A. Correct.</p> <p>19 Q. You know as a detective -- and how long had you</p> <p>20 been a police officer as of 2008?</p> <p>21 A. Nine -- over nine and a half years, almost ten.</p> <p>22 Q. Let's just use ten.</p> <p>23 A. Sure.</p> <p>24 Q. Basically fair to say that up -- about the time</p> <p>25 of the incident which makes the basis of this</p>
<p style="text-align: right;">171</p> <p>1 know what rigor mortis is, then when you see it, you'd</p> <p>2 certainly identify it and you'd know that's what it is.</p> <p>3 Fair statement?</p> <p>4 A. Correct, yes, sir.</p> <p>5 Q. And, of course, this is an infant. We know now</p> <p>6 the child was roughly three months old, right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. You know also from the work that we do that the</p> <p>9 onset of all sorts of things for children and infants is</p> <p>10 different than it would be for adults?</p> <p>11 A. I believe so, yes, sir.</p> <p>12 Q. So, although the explanation appears to be</p> <p>13 different, we'll leave that up to the ME's Office to</p> <p>14 explain to us, if they can, how that happened. Fair</p> <p>15 statement?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. If you can, tell the jury -- and you may</p> <p>18 not be able to. But if you can, can you tell the jury</p> <p>19 about what time it was that morning when you saw Pena</p> <p>20 touch the baby?</p> <p>21 A. Between 9:30 and 10:00 a.m.</p> <p>22 Q. Close enough. That's fine. All right. Now,</p> <p>23 thank you for that -- you can set that aside. That's</p> <p>24 the only thing I wanted to cover on 75.</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">173</p> <p>1 indictment, you had been in law enforcement about ten</p> <p>2 years?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. And Sergeant --</p> <p>5 A. Almendarez.</p> <p>6 Q. Almendarez. I'll get it before the trial's</p> <p>7 over. Sergeant Almendarez had been in law enforcement</p> <p>8 for how long? Best you know.</p> <p>9 A. Longer than me. Thirteen, 15, something like</p> <p>10 that.</p> <p>11 Q. Okay. So, somewhere in the neighborhood of 20</p> <p>12 to 25 years of law enforcement experience between you</p> <p>13 and Sergeant --</p> <p>14 A. Almendarez. You can call her Annie.</p> <p>15 Q. Thank you.</p> <p>16 All right. So, basically at that time you're</p> <p>17 also in a position where you're in contact with the DA's</p> <p>18 Office in Galveston County --</p> <p>19 Okay. So, somewhere starting around 2:00</p> <p>20 o'clock in the afternoon of February the 1st, you get</p> <p>21 this notice from Philadelphia that something's on the</p> <p>22 horizon regarding the Alijah Mullis investigation?</p> <p>23 A. Yes, sir.</p> <p>24 Q. All right. And you come back. You make a</p> <p>25 phone call or there's a phone call received from</p>

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<p style="text-align: right;">174</p> <p>1 Philadelphia's Homicide Division?</p> <p>2 A. That's correct.</p> <p>3 Q. And when is it that you notify the DA's Office</p> <p>4 here in Galveston that there's something on the horizon?</p> <p>5 A. Moments after that. I don't have an exact</p> <p>6 time. But the phone calls between Detective Hesser and</p> <p>7 the DA's Office were in and out. So, around the same</p> <p>8 time.</p> <p>9 Q. Okay. So, fair to say that you hear something</p> <p>10 from Philadelphia PD around 2:00. Without hesitation</p> <p>11 you get the DA's Office involved because you know this</p> <p>12 is an interstate issue?</p> <p>13 A. Correct.</p> <p>14 Q. You know that there's issues about -- because</p> <p>15 you've been in law enforcement for this long, you know</p> <p>16 that there's issues about extradition?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And whether or not someone's going to be</p> <p>19 forcibly extradited or whether it's going to be through</p> <p>20 cooperation, there's all kinds of legal issues involved</p> <p>21 in this case, right?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Because it's an interstate --</p> <p>24 A. Yes, sir.</p> <p>25 Q. -- matter. So, without stressing the point,</p>	<p style="text-align: right;">176</p> <p>1 2:00 p.m. to 2:05?</p> <p>2 A. I'd say it's fair to say. I can't be exact,</p> <p>3 but somewhere around the same time.</p> <p>4 Q. All right. So -- and how long had Mr. Bennett</p> <p>5 been in the DA's Office at the time of this, if you</p> <p>6 know?</p> <p>7 A. I do not know.</p> <p>8 Q. It was clear to you he was an experienced</p> <p>9 prosecutor?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Wasn't a brand new baby lawyer?</p> <p>12 A. That's correct.</p> <p>13 Q. Now, let's -- let's jump forward. There's a</p> <p>14 warrant that's executed -- not executed. There's an</p> <p>15 arrest warrant that's signed by Judge Cox at about 9:15;</p> <p>16 is that right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. Now, where was the affidavit typed that</p> <p>19 was attached to the warrant that was then produced for</p> <p>20 Judge Cox?</p> <p>21 A. Here in the District Attorney's Office.</p> <p>22 Q. And who was it that typed that warrant, if you</p> <p>23 know?</p> <p>24 A. Joel Bennett.</p> <p>25 Q. Okay. So, Mr. Bennett was on the scene while</p>
<p style="text-align: right;">175</p> <p>1 everybody's antennas are up in law enforcement?</p> <p>2 A. That's fair to say.</p> <p>3 Q. All right. Because we want to get it right,</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. It's imperative that whatever it is that's done</p> <p>7 in this case, it's done correctly?</p> <p>8 A. Yes, sir.</p> <p>9 Q. We get the correct information from the correct</p> <p>10 person, right?</p> <p>11 A. Correct, yes, sir.</p> <p>12 Q. And so, would it be fair to say -- is it</p> <p>13 Bennett -- is there in the District Attorney's Office an</p> <p>14 Assistant DA by the name of Bennett?</p> <p>15 A. Yes, sir. Joel Bennett.</p> <p>16 Q. Joel Bennett?</p> <p>17 A. Yes, sir.</p> <p>18 Q. So, Joel Bennett begins -- is that who you</p> <p>19 talked to first or did you talk to Mr. Sistrunk first?</p> <p>20 A. Joel Bennett first.</p> <p>21 Q. Okay. At what point did Mr. Sistrunk get</p> <p>22 involved?</p> <p>23 A. I don't recall seeing Mr. Sistrunk that day.</p> <p>24 Q. So, if you got a call at 2:00, would it be fair</p> <p>25 to say that Mr. Joel Bennett was involved by</p>	<p style="text-align: right;">177</p> <p>1 this questioning was going on back and forth, right?</p> <p>2 A. I'm sorry. On the scene?</p> <p>3 Q. At the DA's Office in Galveston County.</p> <p>4 A. Correct, yes, sir.</p> <p>5 Q. All right. So -- yes. And there's two scenes.</p> <p>6 There's the scene up in the Philadelphia Homicide</p> <p>7 Division, right?</p> <p>8 A. Sure.</p> <p>9 Q. And then there's the scene back in Galveston</p> <p>10 County, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. All right. So, would it be fair to say that</p> <p>13 there were communications by telephone going back and</p> <p>14 forth for that six-hour period between 2:00 and -- well,</p> <p>15 seven-hour period between 2:00 and roughly 9:00 p.m.?</p> <p>16 A. I'm sorry. But there were phone calls going</p> <p>17 back and forth?</p> <p>18 Q. From Galveston to Philadelphia and Philadelphia</p> <p>19 to Galveston?</p> <p>20 MS. CAMERON: Your Honor, can we be</p> <p>21 specific as to who is talking to who?</p> <p>22 MR. BOURQUE: I'll get to that -- I'm</p> <p>23 going there. But I first have to establish if there</p> <p>24 were phone calls.</p> <p>25 THE COURT: Can you answer the question?</p>

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1 THE WITNESS: Yes, sir, I can.
2 A. If you're asking if there's phone calls being
3 made between 2:00 o'clock and the time we got the
4 statement faxed to us, that would not be accurate.
5 Q. (BY MR. BOURQUE) Tell me what would be
6 accurate.
7 A. After he explained to us that they were going
8 to go in to conduct an interview, he told me he'd call
9 me later when they were done. And we weren't going to
10 interrupt them by making phone calls until they were
11 finished.
12 Q. So, at some point it looks like the warrant
13 is -- there's an affidavit that's prepared; is that
14 correct?
15 A. Correct.
16 Q. And it appears that the affidavit is about two
17 full single-spaced pages?
18 A. Yes, sir.
19 Q. And those aren't typed until we know what the
20 facts are. Fair to say?
21 A. Correct.
22 Q. You can't know the facts until after you get
23 them, right?
24 A. Yes, sir.
25 Q. Is, like, Mr. Bennett, is he like the world's

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1 fastest typist?
2 MS. CAMERON: Your Honor, I'm going to
3 object. That's argumentative.
4 THE COURT: This is cross-examination and
5 I'll overrule the objection.
6 MR. BOURQUE: And I'll rephrase it, Judge.
7 It was an improper question. I apologize.
8 Q. (BY MR. BOURQUE) It would be fair to say that
9 it took at least 45 minutes to type that single-spaced
10 affidavit?
11 A. I don't recall how long it took to type the
12 affidavit.
13 Q. Well, I mean, you can type?
14 A. Yes, sir.
15 Q. All right. And Mr. Bennett obviously can type
16 because he's the one that typed it, correct?
17 A. Yes, sir.
18 Q. All right. But -- you would agree with me it's
19 probably about -- well, you would agree it's not typed
20 until you have the information, right?
21 MS. CAMERON: I object to the form of that
22 question when he says "the information." There's a lot
23 of information and then there's what the Defendant said
24 in his statement.
25 MR. BOURQUE: I'll rephrase.

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1 Q. (BY MR. BOURQUE) You don't type the affidavit
2 until you get the statement, correct?
3 A. Not necessarily.
4 Q. I don't want speculation. When was it typed?
5 A. Some could have been typed while we were
6 waiting --
7 MR. BOURQUE: Objection to speculation.
8 MS. CAMERON: Your Honor, I'm going to
9 object. He's not letting the witness answer the
10 question.
11 MR. BOURQUE: If I may, he just did in a
12 speculative manner. If he knows, he can testify. If he
13 doesn't know, he can't testify. That's ultimately --
14 THE COURT: The objection's overruled.
15 Q. (BY MR. BOURQUE) So, you understand. Don't
16 speculate. Only testify to what you understand and what
17 you know.
18 A. Correct.
19 Q. Okay?
20 A. Yes, sir.
21 Q. So, I guess what I'm hearing you tell me is you
22 don't know when the affidavit was typed, correct?
23 You only know that Mr. Bennett typed it?
24 A. I can tell you when it was finished.
25 Q. You can tell me when it was finished?

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1 A. Yes, sir.
2 Q. Okay. It was finished at?
3 A. After we got the statement, sir.
4 Q. Okay. So, it was typed after you got the
5 statement. And then what happens? Are you the person
6 who gets it signed?
7 A. Signing the affidavit or getting it signed in
8 front of the Judge?
9 Q. Getting it signed by the Judge.
10 A. Yes, sir. I was with Sergeant Almendarez when
11 we went to get it signed.
12 Q. So, you guys are here in Galveston?
13 A. Correct.
14 Q. At the courthouse?
15 A. Yes, sir.
16 Q. You get the statement at 8:50. It's typed and
17 completed at sometime after that. Fair statement?
18 A. Yes, sir.
19 Q. And then do you walk it downstairs, upstairs,
20 get the -- what do you do? I mean, how do you get it
21 signed?
22 A. It was late at night. So, we actually had to
23 go to Judge Cox's home and have him sign it there.
24 Q. And where does Judge Cox live?
25 A. I really don't recall. I didn't drive, sir.

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<p style="text-align: right;">182</p> <p>1 I apologize.</p> <p>2 Q. That's okay. Was it League City, Texas City,</p> <p>3 La Marque?</p> <p>4 A. I don't remember to be honest. But not on</p> <p>5 Galveston Island.</p> <p>6 Q. Fair to say it took you at least 15 minutes to</p> <p>7 get there?</p> <p>8 A. Fair to say, yes, sir.</p> <p>9 Q. So, if we have a two-page single-spaced</p> <p>10 affidavit, then some of it had to be typed before you</p> <p>11 actually had all the evidence. Fair statement?</p> <p>12 A. It's possible.</p> <p>13 Q. You don't know?</p> <p>14 A. I do not know.</p> <p>15 Q. What do you do -- it shows it was -- that the</p> <p>16 warrant is signed at 9:15?</p> <p>17 A. Yes, sir.</p> <p>18 Q. So, do you drive back here to Galveston or do</p> <p>19 you fax it to those guys from the Judge's home?</p> <p>20 A. No. Came back down here, sir.</p> <p>21 Q. Came back down here. So, what time was it that</p> <p>22 you faxed it to the folks in Philadelphia, if you did?</p> <p>23 Did you fax it to them?</p> <p>24 A. I don't recall what time we did that, if we</p> <p>25 did. We may have just told them over the phone. Once</p>	<p style="text-align: right;">184</p> <p>1 to talk and give a statement.</p> <p>2 Q. And who was that said to?</p> <p>3 A. Detective Hesser.</p> <p>4 Q. Who did he say that to?</p> <p>5 A. Me.</p> <p>6 Q. He spoke directly to you?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Then did you say to him: "Get the</p> <p>9 statement"?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Don't let any time pass on this, right?</p> <p>12 A. That's correct.</p> <p>13 Q. Because you know in ten years of experience in</p> <p>14 law enforcement that you've got to strike when the</p> <p>15 iron's hot when the person is there willing to bare his</p> <p>16 soul and ready to surrender, then you have -- you need</p> <p>17 to move quickly?</p> <p>18 A. That's a fair statement.</p> <p>19 Q. And if you don't, things can go south pretty</p> <p>20 quickly, right?</p> <p>21 A. Correct.</p> <p>22 Q. For example, when you guys go down to pick him</p> <p>23 up, that's only a day later, right?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And you're going down there to pick him up.</p>
<p style="text-align: right;">183</p> <p>1 it's entered into NCIC, then we wouldn't need to fax it.</p> <p>2 We could just run a person's name.</p> <p>3 Q. Did you talk to -- did you talk to Detective</p> <p>4 Rodden or Detective Hesser or Detective McNamee or any</p> <p>5 of the other detectives that were involved in the</p> <p>6 investigation surrounding the indictment which makes the</p> <p>7 basis of this case?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Which ones did you talk to on February 1st,</p> <p>10 2008?</p> <p>11 A. I spoke to Detective Hesser the majority of the</p> <p>12 time. I know I spoke to McNamee on the phone as well.</p> <p>13 Q. Okay. Now, when you say, "majority of the</p> <p>14 time," that would indicate that there's at least three</p> <p>15 phone calls that you have with Hesser?</p> <p>16 A. There was quite a few at the beginning</p> <p>17 regarding the waiver of rights and stuff like that.</p> <p>18 Q. Regarding the waiver of rights and the ground</p> <p>19 rules?</p> <p>20 A. Correct, yes, sir.</p> <p>21 Q. Because it was important that -- they weren't</p> <p>22 just calling you to tell you they had him in custody.</p> <p>23 They were calling for instructions. Fair statement?</p> <p>24 A. I don't know if that's a fair statement. They</p> <p>25 were calling and explaining that the person was willing</p>	<p style="text-align: right;">185</p> <p>1 And you already know at that point that you're not going</p> <p>2 to be able to talk to him because he's got a lawyer and</p> <p>3 already been in the process of getting to a hearing?</p> <p>4 A. Right.</p> <p>5 Q. So, things do change quickly?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. So, it was good law enforcement for you</p> <p>8 guys to get all your -- and help me if I'm right on</p> <p>9 this -- get all your ducks in a row before the statement</p> <p>10 is taken?</p> <p>11 A. Correct.</p> <p>12 Q. And get all your ducks in a row while the</p> <p>13 statement is being taken?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Everybody needs to understand what the ground</p> <p>16 rules are. When I say everybody, I'm talking about law</p> <p>17 enforcement from both states, right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Because if they're in the process of taking the</p> <p>20 statement and they don't get the right statement, they</p> <p>21 don't get all that they need to get, it could be</p> <p>22 detrimental to your case. Fair statement?</p> <p>23 A. That's possible. Yes, sir.</p> <p>24 Q. So, they're wanting to have -- you're in the</p> <p>25 process of giving them information that tells them some</p>

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<p style="text-align: right;">186</p> <p>1 of the facts that you know and you want them to know.</p> <p>2 Fair statement?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. You talk to them. They knew when they</p> <p>5 sat down to talk to him after -- those officers were</p> <p>6 told by you that the baby had been stomped on, right?</p> <p>7 A. That's correct.</p> <p>8 Q. Or blunt force trauma?</p> <p>9 A. Yes, sir.</p> <p>10 Q. We didn't know at that point, but we knew there</p> <p>11 was blunt force trauma --</p> <p>12 A. Correct.</p> <p>13 Q. -- on the child, correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. So, you wanted that information to be</p> <p>16 known to them. And you knew that there was blunt force</p> <p>17 trauma to the child's head?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And you let them know about that, correct?</p> <p>20 A. Correct.</p> <p>21 Q. You let them know roughly what part of the town</p> <p>22 the incident occurred in. When I say, "incident,"</p> <p>23 that's where the baby's found?</p> <p>24 A. I believe so, but I don't recall going over the</p> <p>25 details of the exact location with Hesser.</p>	<p style="text-align: right;">188</p> <p>1 A. Yes, sir. I really don't know.</p> <p>2 Q. Now, you learned -- as you were talking to</p> <p>3 these homicide investigators, you learned that there was</p> <p>4 a car that was important to the investigation, that --</p> <p>5 you knew that there was a car up in the Philadelphia</p> <p>6 area, correct?</p> <p>7 A. Correct, yes, sir.</p> <p>8 Q. You explained that to McNamee?</p> <p>9 A. Correct.</p> <p>10 Q. And you were interested in getting the car</p> <p>11 because you were looking for certain information out of</p> <p>12 it, correct?</p> <p>13 A. Evidence, yes, sir.</p> <p>14 Q. And you had let the officers know what it was</p> <p>15 you were looking for out of the car?</p> <p>16 A. No, sir.</p> <p>17 Q. You let them know you were looking for a B.B.</p> <p>18 gun and a --</p> <p>19 A. Oh, no, sir.</p> <p>20 Q. You didn't?</p> <p>21 A. No, sir.</p> <p>22 Q. Okay. Are you -- did Sergeant Almendarez?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. Was she on the phone back and forth or</p> <p>25 was she ever on the phone with Hesser or Rodden or</p>
<p style="text-align: right;">187</p> <p>1 Q. That's okay. You know that you -- you sent</p> <p>2 them a Google map at some point?</p> <p>3 A. I didn't send Detective Hesser a Google map.</p> <p>4 Q. You know one was sent?</p> <p>5 A. I did not know that.</p> <p>6 Q. Okay. All right. So -- and when we looked at</p> <p>7 one of the exhibits earlier that had the map on it and</p> <p>8 it had some bright line from Cherry Hill out to --</p> <p>9 looked like Caren Kohberger's house; is that right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Is that the route that you took out to</p> <p>12 the house, that bright line?</p> <p>13 A. I took Highway 6, correct.</p> <p>14 Q. And that's that bright line that we saw on the</p> <p>15 exhibit?</p> <p>16 A. Yes, sir.</p> <p>17 Q. How long did it take you to get to Caren</p> <p>18 Kohberger's house that day?</p> <p>19 A. Thirty minutes, 40.</p> <p>20 Q. Does Judge Cox live out in that part of the</p> <p>21 city?</p> <p>22 A. I really don't recall.</p> <p>23 Q. Bad question. I meant that sort of -- that</p> <p>24 part of the county is what I meant to ask. The answer's</p> <p>25 the same. You don't know?</p>	<p style="text-align: right;">189</p> <p>1 McNamee or was it just you?</p> <p>2 A. I believe it was just me. I don't recall her</p> <p>3 speaking to them.</p> <p>4 Q. So, if one of those were to come in and say,</p> <p>5 "Look, we knew we were looking for a B.B. gun," that</p> <p>6 would just be something that slipped your mind telling</p> <p>7 them? Not that you're lying or trying to hide anything.</p> <p>8 That would be just something that slipped your mind?</p> <p>9 A. That one of our officers said we were looking</p> <p>10 for a B.B. gun?</p> <p>11 Q. No. That if Rodden or McNamee or Hesser or one</p> <p>12 of those guys comes and testifies they were told to look</p> <p>13 for a B.B. gun --</p> <p>14 MS. CAMERON: Your Honor, I'm going to</p> <p>15 object to the form of that question, what somebody else</p> <p>16 said.</p> <p>17 MR. BOURQUE: I'll withdraw the question,</p> <p>18 Judge.</p> <p>19 THE COURT: Thank you.</p> <p>20 Q. (BY MR. BOURQUE) Now, you knew from talking to</p> <p>21 these guys that -- these homicide investigators from</p> <p>22 Philadelphia, that they were experienced. Whether they</p> <p>23 had 30 years experience apiece or ten, you knew you were</p> <p>24 talking to experienced homicide investigators. Fair</p> <p>25 statement?</p>

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<p style="text-align: right;">190</p> <p>1 A. Yes, sir.</p> <p>2 Q. And you could tell from talking to people over</p> <p>3 the phone whether you're visiting with people who have</p> <p>4 experience?</p> <p>5 A. For the most part, yes, sir.</p> <p>6 Q. And that's important because you didn't want</p> <p>7 some rookie messing up an investigation. Fair</p> <p>8 statement?</p> <p>9 A. Fair statement.</p> <p>10 Q. It would be -- it would have been appropriate</p> <p>11 for you if it had been some patrol officer calling, you</p> <p>12 would have been concerned and wanted someone -- wanted</p> <p>13 to talk to some supervisors about getting this right.</p> <p>14 Fair statement?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Let's go back to the scene a little bit on</p> <p>17 January the -- 28th?</p> <p>18 A. 29th.</p> <p>19 Q. 29th, that morning. There's roughly about a</p> <p>20 dozen officers out there when you also include the fire</p> <p>21 fighters that had been present, correct? You got two</p> <p>22 fire fighters, you, Kershaw, Alvarez, Trevino, Powers</p> <p>23 Blackwell, Pena, Luck, Benavidez and Captain Braun --</p> <p>24 Brown?</p> <p>25 A. Braun.</p>	<p style="text-align: right;">192</p> <p>1 Q. You can't have people trampling around and</p> <p>2 stepping all around just because they want to help.</p> <p>3 Fair statement?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Some of the problem we had, whether it was a</p> <p>6 problem or not, some of the phenomenon here is that</p> <p>7 people were showing up, officers were showing up at the</p> <p>8 scene to volunteer their time to assist and they weren't</p> <p>9 invited by you. They just appeared. Fair statement?</p> <p>10 A. Possibly. I'm not sure.</p> <p>11 Q. Let's put it this way: When you go back to</p> <p>12 search the house, the trailer?</p> <p>13 A. Yes, sir.</p> <p>14 Q. The trailer that belonged to Ms. Duarte?</p> <p>15 A. Yes, sir.</p> <p>16 Q. How many of you go back there?</p> <p>17 A. Four.</p> <p>18 Q. Okay. So, there's four officers. You --</p> <p>19 A. Sergeant Almendarez, Scott Pena and Sergeant</p> <p>20 Jones.</p> <p>21 Q. Okay. There are four of you. And four of you</p> <p>22 have specific obligations, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. All right. And what was your obligation at the</p> <p>25 time?</p>
<p style="text-align: right;">191</p> <p>1 Q. Braun?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And Sergeant Jones. So, about 13. Does that</p> <p>4 sound about right?</p> <p>5 A. That sounds about right.</p> <p>6 Q. Okay. Is there -- and it's important -- and</p> <p>7 these are people that you just listed in your report as</p> <p>8 having been at the scene --</p> <p>9 A. Yes, sir.</p> <p>10 Q. -- correct? And it's important. Scene</p> <p>11 integrity is everything, isn't it?</p> <p>12 A. Yes, sir.</p> <p>13 Q. That's why you put out the yellow markers,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. All right. But it's not in the best interest</p> <p>17 of anyone to have 13 officers trampling inside a crime</p> <p>18 scene. Fair statement?</p> <p>19 A. It depends on their job description.</p> <p>20 Q. Well, weren't you kind of the scene supervisor?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. And, you know, you know as a trained</p> <p>23 detective at the time and even more so now as a Special</p> <p>24 Agent with the FBI that scene integrity is everything?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">193</p> <p>1 A. Scene management again and interviews,</p> <p>2 et cetera.</p> <p>3 Q. Scene management and interviews?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. And what was Almendarez?</p> <p>6 A. Almendarez?</p> <p>7 Q. Almendarez. Almendarez.</p> <p>8 A. Theirs was the same thing, for interview</p> <p>9 purposes.</p> <p>10 Q. Okay. The third one, Pena, what was his duty?</p> <p>11 A. He's our crime scene officer.</p> <p>12 Q. And the fourth one?</p> <p>13 A. Same thing. Crime scene.</p> <p>14 Q. So, you're kind of the supervisor of the scene.</p> <p>15 And these three detectives have assignments as you go in</p> <p>16 there. Okay. Right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And you don't know what you're looking for, but</p> <p>19 you know that you have four experienced detectives,</p> <p>20 homicide detectives who know how to protect a scene and</p> <p>21 how to gather evidence, right?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. Now, is four more or less than 13?</p> <p>24 A. That would be less, sir.</p> <p>25 Q. And we have a photograph out at the scene where</p>

<p style="text-align: right;">194</p> <p>1 there's some divot or something. You don't</p> <p>2 know -- do you even know what I'm talking about, a divot</p> <p>3 at the scene?</p> <p>4 A. The photograph of the divot? Yes, sir, I'm</p> <p>5 familiar with it.</p> <p>6 Q. You don't know what caused that?</p> <p>7 A. No, sir.</p> <p>8 Q. You didn't locate it. Someone else did?</p> <p>9 A. Correct.</p> <p>10 Q. And when you're at the scene, you're not the</p> <p>11 person who bends down to check the child for rigor</p> <p>12 mortis. One of those persons was Pena?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. Which is appropriate because he's</p> <p>15 working with you --</p> <p>16 A. Yes, sir.</p> <p>17 Q. -- correct? The other one is Kershaw.</p> <p>18 Kershaw is not assigned to this case that morning, is</p> <p>19 he?</p> <p>20 A. No, sir. He was the first supervisor on the</p> <p>21 scene.</p> <p>22 Q. First supervisor on the scene. Are you aware</p> <p>23 of the fact that he also touched the baby?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Do you know who else touched the baby or if</p>	<p style="text-align: right;">196</p> <p>1 Q. Okay. Without asking you or any other</p> <p>2 detective on the scene with CSU or CSI -- what's your</p> <p>3 unit called, CSU?</p> <p>4 A. I don't know what they call it here anymore,</p> <p>5 sir.</p> <p>6 Q. Okay. We'll call it the CSU guys.</p> <p>7 A. There you go.</p> <p>8 Q. All right. So, you know that when the CSU guys</p> <p>9 get there that the scene had already been disturbed?</p> <p>10 A. Yes, sir.</p> <p>11 Q. I mean, that cannot be welcome news to you,</p> <p>12 correct?</p> <p>13 A. Correct, unless you want me to explain it.</p> <p>14 Q. Well, we know that the baby's been touched by</p> <p>15 fire fighters, right?</p> <p>16 MS. CAMERON: Your Honor, can the witness</p> <p>17 be allowed to explain?</p> <p>18 THE COURT: This is cross-examination.</p> <p>19 You may have the opportunity to redirect if you like.</p> <p>20 You may proceed, Mr. Bourque.</p> <p>21 MR. BOURQUE: Thank you, Judge.</p> <p>22 Q. (BY MR. BOURQUE) We know that there's been a</p> <p>23 sheet placed over the baby?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Do we know who placed that sheet there?</p>
<p style="text-align: right;">195</p> <p>1 anyone touched the baby before you got there?</p> <p>2 A. EMS personnel.</p> <p>3 Q. Okay. Did you observe Kershaw touch the baby?</p> <p>4 A. No, sir, I did not. I don't recall that.</p> <p>5 Q. So, that had happened before you got there?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And then he had to be the one to tell you that</p> <p>8 he had touched the baby?</p> <p>9 A. Yes, sir, correct.</p> <p>10 Q. You couldn't have been happy with that?</p> <p>11 A. That he touched the child?</p> <p>12 Q. Yes.</p> <p>13 A. It depends on how he did it, the purpose of</p> <p>14 doing it.</p> <p>15 Q. Well, I understand that. We already know EMS</p> <p>16 has come. They're gone even before he gets there, that</p> <p>17 being Kershaw. We know that, right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. So, they're obviously gone before you get</p> <p>20 there, correct?</p> <p>21 A. EMS personnel?</p> <p>22 Q. Yes.</p> <p>23 A. Yes, sir.</p> <p>24 Q. And you know that Kershaw has touched the baby?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">197</p> <p>1 A. I believe it was the EMS personnel or the fire</p> <p>2 department. I'm not sure.</p> <p>3 Q. But we don't know that?</p> <p>4 A. Correct.</p> <p>5 Q. So, we don't know -- was the sheet ever</p> <p>6 returned to whoever it belonged to originally?</p> <p>7 A. I believe the sheet was recovered as evidence</p> <p>8 by Scott Pena. I believe so.</p> <p>9 Q. There are other things that we see scattered on</p> <p>10 the ground, you know, to the untrained eye, me, looks</p> <p>11 like litter?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Were you able to differentiate whether it</p> <p>14 really was litter or whether it had anything to do with</p> <p>15 the case? Do you know what I'm talking about?</p> <p>16 A. Yes, sir. Yeah. But I'm not sure at the time</p> <p>17 if we're able to tell which things are which. So, I</p> <p>18 know some things you collected that turned out to not</p> <p>19 be -- have any evidentiary value at all.</p> <p>20 Q. All right.</p> <p>21 MR. BOURQUE: May I, Judge?</p> <p>22 THE COURT: You may.</p> <p>23 Q. (BY MR. BOURQUE) Let's see if we can kind of</p> <p>24 go through some of them.</p> <p>25 A. Sure.</p>

<p style="text-align: right;">198</p> <p>1 Q. We could see by looking at State's Exhibit</p> <p>2 No. 55 --</p> <p>3 MR. BOURQUE: May I stand up here and do</p> <p>4 it, Judge?</p> <p>5 THE COURT: You may. Keep your voice up,</p> <p>6 please.</p> <p>7 Q. (BY MR. BOURQUE) We can see little white</p> <p>8 flakes all over this. And I'm just going to call it a</p> <p>9 crime scene area, the area that's roped off.</p> <p>10 A. Yes, sir.</p> <p>11 Q. Is that okay?</p> <p>12 A. Yes, sir.</p> <p>13 Q. All right. Now, how do you differentiate</p> <p>14 between these things that are laid out here and whether</p> <p>15 or not they may be important, if they are, to the</p> <p>16 investigation?</p> <p>17 A. You start by looking at it and making a</p> <p>18 decision based on that.</p> <p>19 Q. What -- did you make any notes about what --</p> <p>20 you see this little circle looks like, kind of a folded</p> <p>21 piece of paper right here?</p> <p>22 A. I'm not even sure what that is. I see it in</p> <p>23 the photograph, yes, sir.</p> <p>24 Q. Do you know if you even looked at it?</p> <p>25 A. I don't recall. I can't tell what it is in the</p>	<p style="text-align: right;">200</p> <p>1 A. Yes, sir.</p> <p>2 Q. Right? And to do an appropriate investigation,</p> <p>3 you may have found information there, but you don't know</p> <p>4 if you looked, right?</p> <p>5 A. Yes, sir, because I don't recall. I can't tell</p> <p>6 what it is in that photograph. I'm not sure if that was</p> <p>7 something collected or not.</p> <p>8 Q. If we look down in this brushy area here, see</p> <p>9 where my finger is?</p> <p>10 A. Yes, sir.</p> <p>11 Q. What is that, if you know?</p> <p>12 A. I can't tell from that picture. May be the</p> <p>13 headrest from the car seat. I'm not certain.</p> <p>14 Q. But it looks like it's inside the roped-off</p> <p>15 area, doesn't it?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Here we have State's Exhibit No. 62.</p> <p>18 This looks like the headrest right here?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Can you see that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. So, we know if we look back at State's</p> <p>23 Exhibit No. 61 and we're looking at this large piece</p> <p>24 of -- we know that's not the headrest?</p> <p>25 A. That's correct, yes, sir.</p>
<p style="text-align: right;">199</p> <p>1 photograph.</p> <p>2 Q. Outside -- try to keep these in order. It will</p> <p>3 take me a minute. Let me look at State's Exhibit No.</p> <p>4 60. And bear with me here in case I break this,</p> <p>5 but -- I'm not going to touch it. Over here in this</p> <p>6 area -- I can't get the zoom to work. I apologize.</p> <p>7 MR. BOURQUE: It's okay. Yeah, if you</p> <p>8 would.</p> <p>9 Q. (BY MR. BOURQUE) Okay. Do you see what we're</p> <p>10 talking about here? We've got these additional papers</p> <p>11 over here. Did you send anybody of your 13 guys that</p> <p>12 were out to help you, did you ask them to go pick this</p> <p>13 stuff up and let's find out if this is related to our</p> <p>14 case?</p> <p>15 A. Scott Pena would have been the only person I</p> <p>16 discussed picking up evidence with.</p> <p>17 Q. When you say that, what do you mean you would</p> <p>18 have discussed it with -- you would have talked to Scott</p> <p>19 Pena about whether to retrieve any of this information?</p> <p>20 A. Correct.</p> <p>21 Q. So then, you'd agree with me there's -- for</p> <p>22 lack of a better word, there's a lot of litter in this</p> <p>23 crime scene --</p> <p>24 A. I would agree with that.</p> <p>25 Q. -- area?</p>	<p style="text-align: right;">201</p> <p>1 Q. But as you sit here right now, you can't tell</p> <p>2 me whether it does or does not have anything to do with</p> <p>3 the incident that's made the basis of this indictment?</p> <p>4 A. Yes, sir. I'm not sure.</p> <p>5 Q. Correct?</p> <p>6 A. Correct.</p> <p>7 Q. Now, did you guys have any crime scene tags?</p> <p>8 You know, like a lot of times you'll see these little --</p> <p>9 you know, like you go to Whataburger, you get those</p> <p>10 little numbers. And a lot of times you'll see pictures</p> <p>11 at a crime scene with those kind of numbers laid on the</p> <p>12 ground to spot certain things. I don't see any of that</p> <p>13 at this crime scene.</p> <p>14 A. In those photographs you probably won't.</p> <p>15 Q. There will be others?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. The sock you found at the house -- let</p> <p>18 me ask you this when we look at 73. Let me talk about</p> <p>19 the socks for a minute. Did you match it to the one</p> <p>20 that was found in the field at the scene?</p> <p>21 A. Personally I was able to match it by color and</p> <p>22 approximate size.</p> <p>23 Q. That's about it?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. So, it appeared they were matches, but</p>

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<p style="text-align: right;">202</p> <p>1 you didn't really do any comparison side by side. Your</p> <p>2 recollection looks like the same one?</p> <p>3 A. Correct.</p> <p>4 Q. When we look at this State's Exhibit No. 73,</p> <p>5 would it be fair to say that when a person walks, they</p> <p>6 have a heel and a toe on the shoe?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Like, if I were to step right here and I had</p> <p>9 water on the bottom of my shoe maybe on the carpet or</p> <p>10 something, you would expect when I lifted my foot for it</p> <p>11 to leave a heel and a toe area where I just stepped.</p> <p>12 Fair statement?</p> <p>13 A. Fair statement, yes, sir.</p> <p>14 Q. And really even more so, you know, if I were</p> <p>15 barefoot and stepped on an area, like if I stepped in</p> <p>16 some water and then stepped on a sack or something, a</p> <p>17 paper sack, you could easily see the heel and the toe</p> <p>18 impression of where I just stepped. Fair statement?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Doesn't this look like -- 73, doesn't that</p> <p>21 really look like a heel and a foot impression?</p> <p>22 A. Possible.</p> <p>23 MS. CAMERON: Your Honor, I'm going to</p> <p>24 object to any speculation of this witness as being a</p> <p>25 heel and a toe.</p>	<p style="text-align: right;">204</p> <p>1 A. I believe it was taken, yes, sir.</p> <p>2 Q. Do you know if it was examined for any reason</p> <p>3 in this case?</p> <p>4 A. That, I do not know.</p> <p>5 Q. Fingerprints, DNA or anything else?</p> <p>6 A. I'm uncertain.</p> <p>7 Q. What about this piece right here?</p> <p>8 A. I can't tell what that is, sir.</p> <p>9 Q. Were you able in your investigation to</p> <p>10 determine whether that bottle had anything to do with</p> <p>11 that incident which makes the basis of this indictment?</p> <p>12 A. The bottle's not used for the indictment</p> <p>13 purposes, no, sir.</p> <p>14 MR. BOURQUE: Judge, maybe it will help</p> <p>15 him if he can see closer. May I approach?</p> <p>16 THE COURT: You may.</p> <p>17 Q. (BY MR. BOURQUE) It doesn't help me, but maybe</p> <p>18 it will help you if you can look at 63 in person and see</p> <p>19 if that helps you identify what that second piece is</p> <p>20 laying on the ground.</p> <p>21 A. Unless you have a close-up one, I'm not certain</p> <p>22 what that is. I can speculate but --</p> <p>23 Q. Don't speculate.</p> <p>24 A. -- I'm not supposed to speculate. I'm not</p> <p>25 certain what that is.</p>
<p style="text-align: right;">203</p> <p>1 MR. BOURQUE: Well, one guy gets to</p> <p>2 speculate, it's a bouncing chair --</p> <p>3 MS. CAMERON: Your Honor, I'm going to --</p> <p>4 THE COURT: I overrule the objection.</p> <p>5 You may answer the question if you can.</p> <p>6 A. I can't tell based on pictures. I'm sorry.</p> <p>7 Q. (BY MR. BOURQUE) It's not dissimilar from what</p> <p>8 you might expect from a foot impression, is it?</p> <p>9 A. Besides the size of it, I would say it would</p> <p>10 not be dissimilar.</p> <p>11 Q. Let me show you State's Exhibit No. 63. And</p> <p>12 what's covered here is the infant child. Okay?</p> <p>13 A. Yes, sir.</p> <p>14 Q. What's left uncovered are two -- what are those</p> <p>15 two things?</p> <p>16 A. The thing on the -- let me use my pointer.</p> <p>17 That I believe is a bottle. And the thing next to it, I</p> <p>18 am not certain what that is on that picture. I believe</p> <p>19 that is a glass bottle there on the left. And that</p> <p>20 item, I cannot tell based on the picture.</p> <p>21 Q. What might we expect to find from a glass</p> <p>22 bottle?</p> <p>23 A. Evidence. It's part of this case.</p> <p>24 Q. Was this bottle taken as physical evidence in</p> <p>25 this case and examined for any reason?</p>	<p style="text-align: right;">205</p> <p>1 Q. Okay. Do you know if he even collected it?</p> <p>2 A. I couldn't tell based on that picture. I would</p> <p>3 have to see the other ones.</p> <p>4 Q. Well, no -- let me for the record just state</p> <p>5 that I've lost 73 and 74. Got them.</p> <p>6 A. Okay.</p> <p>7 Q. Best of your recollection, how old were</p> <p>8 Ms. Duarte's children?</p> <p>9 A. I have a range in my report if you want me to</p> <p>10 look at it real quick. Two to 12 or something like</p> <p>11 that, sir.</p> <p>12 Q. If that will refresh your recollection, go</p> <p>13 ahead.</p> <p>14 A. Two to 11.</p> <p>15 Q. So, ages 2 to 11?</p> <p>16 A. Yes, sir.</p> <p>17 Q. So -- and sometimes 2-year-olds can still be in</p> <p>18 those little -- what do they call those?</p> <p>19 A. A stroller?</p> <p>20 Q. Strollers. Thank you. And we see a stroller</p> <p>21 in some of the pictures they have inside the trailer</p> <p>22 that's marked as 212 -- actually, it's State's Exhibit</p> <p>23 No. 79. We see that the address on the outside of the</p> <p>24 trailer is 212?</p> <p>25 A. Yes, sir.</p>

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<p style="text-align: right;">206</p> <p>1 Q. That's Ms. Duarte's trailer, right?</p> <p>2 A. Correct.</p> <p>3 Q. It looks like you guys got a consent to search</p> <p>4 from Ms. Kohberger -- not Ms. Kohberger, but from</p> <p>5 Ms. Duarte; is that correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. On the 29th?</p> <p>8 A. That's correct.</p> <p>9 Q. And if I understand this basically -- you guys</p> <p>10 are basically wanting to search the house, anything, the</p> <p>11 barn outside or whatever, you're basically -- it's a</p> <p>12 carte blanche right to search, correct? You weren't</p> <p>13 limited as to what you might be searching for?</p> <p>14 A. She gave us full consent, correct, yes, sir.</p> <p>15 Q. Of course, that's important also in the</p> <p>16 investigation or in any search. What you're searching</p> <p>17 for can be important. If you're limited in your search,</p> <p>18 you're limited in your search. That's not what you have</p> <p>19 here, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Through State's Exhibit No. 77, you got carte</p> <p>22 blanche to search my house, take whatever you want?</p> <p>23 A. Yes, sir.</p> <p>24 Q. So, you weren't just limited in looking for</p> <p>25 items that might fit the incident which makes the basis</p>	<p style="text-align: right;">208</p> <p>1 A. No, sir. I'm saying -- you're asking at the</p> <p>2 house, No. 212?</p> <p>3 Q. Yes.</p> <p>4 A. It was nighttime. I don't recall off the top</p> <p>5 of my head.</p> <p>6 Q. It wouldn't have been 3:00 o'clock in the</p> <p>7 morning?</p> <p>8 A. No, sir. 8:00, 9:00, something like that. I</p> <p>9 could check for you.</p> <p>10 Q. When we look at State's Exhibit No. 88 -- back</p> <p>11 this up.</p> <p>12 Look at State's Exhibit No. 78. It appears</p> <p>13 that -- would it be fair to say there's, like, two beds</p> <p>14 in here?</p> <p>15 A. Yes, sir.</p> <p>16 Q. There's one down here in the corner and then</p> <p>17 this one with the sheet on it. Did you see a baby bed</p> <p>18 in the house?</p> <p>19 A. No, sir.</p> <p>20 Q. Did you see a bassinet?</p> <p>21 A. I don't -- not in that room, no, sir.</p> <p>22 Q. Do you recall having seen a bassinet?</p> <p>23 A. I do not. Do not. Definitely not in that</p> <p>24 room.</p> <p>25 Q. And it's been a while since I've had kids, but</p>
<p style="text-align: right;">207</p> <p>1 of the indictment. But if you had come across illicit</p> <p>2 drugs or marijuana or anything like that, you would have</p> <p>3 taken it?</p> <p>4 A. Correct.</p> <p>5 Q. You didn't find any of those things in the</p> <p>6 search?</p> <p>7 A. No, sir.</p> <p>8 Q. So that we're clear on that, right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. We didn't find any -- I don't know, black</p> <p>11 mollies -- I bet they don't have that anymore. Xanax --</p> <p>12 A. I'm not sure what a black molly is.</p> <p>13 Q. That's how young you are. But there are no</p> <p>14 drugs or anything found, no cocaine, no heroin, there's</p> <p>15 no illicit drugs of any type?</p> <p>16 A. Not that I recall, yes, sir.</p> <p>17 Q. What's the other big one? There's no meth.</p> <p>18 There's no crystal meth there?</p> <p>19 A. No, sir.</p> <p>20 Q. I can't believe I thought of black mollies.</p> <p>21 Where did that come from?</p> <p>22 Okay. What time of day or night are you</p> <p>23 executing your search?</p> <p>24 A. At 212?</p> <p>25 Q. Okay. 2:12 in the morning --</p>	<p style="text-align: right;">209</p> <p>1 wouldn't three months, you would still be in a bassinet?</p> <p>2 A. Not according to Caren.</p> <p>3 Q. Definitely would have been in a baby bed?</p> <p>4 A. No, sir.</p> <p>5 Q. So, the baby didn't have a baby bed?</p> <p>6 A. They let Alijah sleep in the carrier, in the</p> <p>7 car seat.</p> <p>8 Q. In the car seat?</p> <p>9 A. Yes, sir.</p> <p>10 Q. This looks like -- 89 looks like the same</p> <p>11 bedroom, different angle. Would you agree with me?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Did you learn from your investigation where --</p> <p>14 when Alijah was put down for the night, where the baby</p> <p>15 was allowed to sleep? Was it in this room?</p> <p>16 A. Yes, sir.</p> <p>17 Q. How many people slept in this room?</p> <p>18 A. Five.</p> <p>19 Q. Five people in this room?</p> <p>20 A. Yes, sir.</p> <p>21 Q. How many bedrooms were in this trailer?</p> <p>22 A. Three, I believe.</p> <p>23 Q. Nine people living in the house is what it</p> <p>24 sounds like?</p> <p>25 A. Michele Duarte's two older sons lived in the</p>

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<p style="text-align: right;">210</p> <p>1 room with the Defendant and Caren and Alijah.</p> <p>2 Q. Two older-- how old are they?</p> <p>3 A. Eleven and 7 -- 8, I believe. Not sure.</p> <p>4 Q. Who was the smoker in the family?</p> <p>5 A. I know Ms. Kohberger smoked. I'm not sure who</p> <p>6 else in that room smoked.</p> <p>7 Q. Is that a cigarette pack right there?</p> <p>8 A. I believe so, yes, sir.</p> <p>9 Q. This next one, State's Exhibit No. 91, looks</p> <p>10 like a different bedroom. Is that an accurate</p> <p>11 assessment?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Do you know who -- from your investigation who</p> <p>14 slept in here?</p> <p>15 A. One of the daughters of Ms. Duarte or maybe</p> <p>16 both of them. I don't know for sure. I know one for</p> <p>17 sure.</p> <p>18 Q. I don't want to split hairs with you about some</p> <p>19 of this stuff. But really, Luvs, these diapers here,</p> <p>20 that's a pretty common brand, right? I mean, if I went</p> <p>21 to the grocery store --</p> <p>22 A. Luvs? Yes, sir.</p> <p>23 Q. If I went to the store today to buy some Luvs</p> <p>24 diapers, it wouldn't be hard to find?</p> <p>25 A. I don't believe so.</p>	<p style="text-align: right;">212</p> <p>1 A. I believe they were, yes, sir.</p> <p>2 Q. And are there any photographs of the third</p> <p>3 bedroom?</p> <p>4 A. I'm not certain. I don't know, sir.</p> <p>5 Q. Do you know how these items wound up on the</p> <p>6 bed? Did y'all just pose those?</p> <p>7 A. Correct. I believe that they were found in a</p> <p>8 different spot and put there to have the picture taken.</p> <p>9 Q. When we look at Defendant's (sic) Exhibit</p> <p>10 No. 78, can you tell us what this little swing set --</p> <p>11 what is that all around it?</p> <p>12 A. What is around the swing set?</p> <p>13 Q. Well, what is the swing set? Is that what that</p> <p>14 is, a swing set?</p> <p>15 A. I guess -- it appears to be one of those --</p> <p>16 like a rocking seat or something.</p> <p>17 Q. And these other things that are scattered</p> <p>18 around the outside?</p> <p>19 A. Plants and some -- looks like kids toy or</p> <p>20 something leaning up against the wall there. I believe</p> <p>21 that's a trash can. I'm not sure.</p> <p>22 Q. Looked like it might be a grill?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Talking about this piece right here. Looks</p> <p>25 kind of like a grill.</p>
<p style="text-align: right;">211</p> <p>1 Q. Would you say Evenflo is a pretty big</p> <p>2 manufacturer of baby stuff? Wouldn't be surprised if at</p> <p>3 my home with my grandchildren, I have Evenflo push carts</p> <p>4 and all that?</p> <p>5 A. Fair to say, yes, sir.</p> <p>6 Q. Do we know whose blanket it is that's depicted</p> <p>7 in State's Exhibit No. 94?</p> <p>8 A. Is that the blue one?</p> <p>9 Q. Yeah.</p> <p>10 A. I believe that was the blanket that belonged to</p> <p>11 Baby Alijah.</p> <p>12 Q. Was it posed for this picture or is this how</p> <p>13 you found it?</p> <p>14 A. I believe that was posed for the picture.</p> <p>15 Q. For the effect? Then we see State's Exhibit</p> <p>16 No. 96 here. And this looks like a different bedroom or</p> <p>17 not? I don't know.</p> <p>18 A. No, sir. That should be the same bedroom.</p> <p>19 Q. As the first one we saw?</p> <p>20 A. Yes, sir, with the two beds.</p> <p>21 Q. Okay. Do you know what those documents are</p> <p>22 that are on the bed?</p> <p>23 A. I do not know what those are, sir.</p> <p>24 Q. Do you know if they were seized as a part of</p> <p>25 your investigation?</p>	<p style="text-align: right;">213</p> <p>1 Now, when was it that you went to</p> <p>2 Philadelphia?</p> <p>3 A. I thought it was February 2nd, but maybe it was</p> <p>4 the 3rd.</p> <p>5 Q. Check and see. Looks like the 3rd.</p> <p>6 A. That sounds more accurate.</p> <p>7 Q. Look at page 11 and see if that refreshes your</p> <p>8 recollection.</p> <p>9 A. Yes, sir. February the 3rd, 7:45.</p> <p>10 Q. Okay. So, when you arrived there on the 3rd,</p> <p>11 there's really -- it's late in the day. So, you really</p> <p>12 don't have a chance to get started to do anything until</p> <p>13 the next morning. Is that a fair statement?</p> <p>14 A. I believe so. We left pretty early, but that's</p> <p>15 correct.</p> <p>16 Q. It's a long flight?</p> <p>17 A. Yes, sir.</p> <p>18 Q. When you arrived in Philadelphia or when you go</p> <p>19 by the Homicide Department the next day for whatever</p> <p>20 official business you have to conduct, it's at or about</p> <p>21 that time when Mr. Mullis who is seated to my right is</p> <p>22 going before a magistrate. Does that sound about right?</p> <p>23 A. I believe it was that same day, but that may</p> <p>24 have been on the morning of the 3rd. I'm not sure if he</p> <p>25 went on the 3rd or 4th.</p>

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<p style="text-align: right;">214</p> <p>1 Q. Were you present when he went before the</p> <p>2 magistrate?</p> <p>3 A. No, sir.</p> <p>4 Q. You just know by the time you got there and</p> <p>5 things got squared away, he had waived extradition and</p> <p>6 was going to be ready for you to take him and bring him</p> <p>7 back to Galveston?</p> <p>8 A. Yes, sir, correct.</p> <p>9 Q. Did you know that by the time you -- by the</p> <p>10 time you left here to go to Philadelphia?</p> <p>11 A. No, sir.</p> <p>12 Q. Now, you know, you indicated that when he</p> <p>13 talked to you, it was sort of like he had known you your</p> <p>14 whole life?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Well, I mean, you're an investigator, correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. You're a detective, right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. With the FBI?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Special Agent with the Federal Bureau of</p> <p>23 Investigation?</p> <p>24 A. Correct, yes, sir.</p> <p>25 Q. You know by the time you get there and you meet</p>	<p style="text-align: right;">216</p> <p>1 to them in a pleasant way, don't you?</p> <p>2 A. To the Defendant or just in general?</p> <p>3 Q. Any Defendant who's willing to talk to you and</p> <p>4 it's an important case, you want to build a rapport with</p> <p>5 that person?</p> <p>6 A. Correct, yes, sir.</p> <p>7 Q. Part of building a rapport is learning how to</p> <p>8 talk to the person as if you're really not angry with</p> <p>9 what's happened, right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Because you can't afford to let them know that</p> <p>12 you're angry, right?</p> <p>13 A. Yes, sir.</p> <p>14 Q. If you do, it might turn the investigation off,</p> <p>15 right?</p> <p>16 A. Correct.</p> <p>17 Q. So, you're trying to build a rapport with that</p> <p>18 person?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So that you can get information from that</p> <p>21 person, right?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. And you've been trained if you can get</p> <p>24 it done right, you refer to that person by his first</p> <p>25 name. You talk to him in a cordial and kind of an</p>
<p style="text-align: right;">215</p> <p>1 these guys from Philadelphia, you know that each one of</p> <p>2 them probably has 25 to 30 years worth of law</p> <p>3 enforcement behind them. Fair statement?</p> <p>4 A. Yes, sir.</p> <p>5 Q. You're trained in law enforcement, you know.</p> <p>6 When you -- you're trained on how to speak to these</p> <p>7 suspects and things, especially when you've got a</p> <p>8 suspect that is interested in baring his soul, right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. You don't want to aggravate them and make them</p> <p>11 mad, right?</p> <p>12 A. Correct.</p> <p>13 Q. You get them coffee if they want it. You can</p> <p>14 get them a pizza if they want it. If they need</p> <p>15 something, y'all be happy to provide it for them, right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. As long as they're giving, you're willing to</p> <p>18 give?</p> <p>19 A. Fair statement.</p> <p>20 Q. And you got -- whether you're in Philadelphia,</p> <p>21 whether you're in Wisconsin, whether you're in Florida,</p> <p>22 investigators know that be nice to the suspect when he's</p> <p>23 talking to you and he'll be nice in return, right?</p> <p>24 A. For the most part, yes, sir.</p> <p>25 Q. For the most part. So, you guys kind of talk</p>	<p style="text-align: right;">217</p> <p>1 honorable way as if he is your friend, right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. So, you know that these officers in</p> <p>4 Philadelphia, if they're doing their job, they're</p> <p>5 befriending this person as well, this person being</p> <p>6 Mr. Mullis?</p> <p>7 A. Yes, sir.</p> <p>8 Q. You didn't want to do anything when you got</p> <p>9 there to disrupt that rapport or that relationship,</p> <p>10 right?</p> <p>11 A. That's correct.</p> <p>12 Q. So, you were kind and gentle and polite to</p> <p>13 Mr. Mullis?</p> <p>14 A. I believe so.</p> <p>15 Q. Right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And it would be fair to say that Mr. Mullis</p> <p>18 didn't curse you?</p> <p>19 A. That's correct.</p> <p>20 Q. And you didn't curse him?</p> <p>21 A. No, sir.</p> <p>22 Q. And he wasn't disrespectful to you?</p> <p>23 A. No, sir.</p> <p>24 Q. He was kind, talkative?</p> <p>25 A. Yes, sir.</p>

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<p style="text-align: right;">218</p> <p>1 Q. And treated you basically with the same respect</p> <p>2 that you treated him with?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. So I can get back to State's Exhibit No.</p> <p>5 47 for a minute, you know, you don't really even type</p> <p>6 State's Exhibit -- you don't complete State's Exhibit</p> <p>7 No. 47 until you've actually read the statement that was</p> <p>8 given by Mr. Mullis in Philadelphia, correct?</p> <p>9 A. Again, I don't think that that's entirely</p> <p>10 accurate.</p> <p>11 Q. Well, I think -- did you testify previously</p> <p>12 that we read the Defendant's statement and then got a</p> <p>13 warrant?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. And again, I want to make sure that you</p> <p>16 don't -- that you understand I'm not talking about the</p> <p>17 whole statement. I'm just talking about completing this</p> <p>18 statement. You don't complete the statement until after</p> <p>19 you've read the entire statement that you had faxed</p> <p>20 to --</p> <p>21 A. Yes, sir, that's correct.</p> <p>22 Q. So, around 8:50 or so, you got the statement</p> <p>23 faxed to you from Philadelphia. Fair statement?</p> <p>24 A. Yes, sir.</p> <p>25 Q. It would also be fair, you looked at the</p>	<p style="text-align: right;">220</p> <p>1 little bit.</p> <p>2 All right. You may answer the question.</p> <p>3 A. The one that I have was signed prior to being</p> <p>4 faxed. So the copy that I have was signed.</p> <p>5 Q. (BY MR. BOURQUE) But you read the statement,</p> <p>6 correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Is that right?</p> <p>9 A. Correct.</p> <p>10 Q. You make sure that it has everything in there</p> <p>11 that you need?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. Do you let Philadelphia know, okay,</p> <p>14 we're -- we've got it. Good statement?</p> <p>15 A. I believe at that time they just explained to</p> <p>16 me that they were going to move on to a videotaped</p> <p>17 interview.</p> <p>18 Q. Okay. So, you get the written statement. And</p> <p>19 you've got the written statement. They informed you</p> <p>20 they're going to move on to do a videotaped statement?</p> <p>21 A. Yes, sir.</p> <p>22 Q. So they've indicated to you that not only has</p> <p>23 he surrendered himself --</p> <p>24 A. Correct.</p> <p>25 Q. -- he has given them a written statement that</p>
<p style="text-align: right;">219</p> <p>1 statement. Now you know it's about six pages roughly?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. Single-spaced, right?</p> <p>4 A. I believe so.</p> <p>5 Q. Okay. So, it's fair to say it took ten or 15</p> <p>6 minutes to read through the statement, make sure you had</p> <p>7 everything you needed, right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. Because you wanted to make sure that you</p> <p>10 had everything that you needed before you told them,</p> <p>11 "It's okay. Good statement," right?</p> <p>12 A. Before I told who?</p> <p>13 Q. Before you told Philadelphia.</p> <p>14 A. Yes, sir.</p> <p>15 Q. Statement's ready. Okay. Now, here's my</p> <p>16 question: If they're sending the statement to you,</p> <p>17 faxing it to you, are they faxing it to you before he</p> <p>18 had signed it so that you can look at it or do they send</p> <p>19 it to you only after it's executed; that is, signed by</p> <p>20 him?</p> <p>21 A. I'd have to look. I believe it was already</p> <p>22 signed, sir.</p> <p>23 Q. Take a look and see.</p> <p>24 THE COURT: While he's doing that, ladies</p> <p>25 and gentlemen, let's stand up for a moment, move around a</p>	<p style="text-align: right;">221</p> <p>1 you know took about six hours to take, seven?</p> <p>2 A. Yes, sir.</p> <p>3 Q. I'm going to use 2:00 to 9:00 instead of 1:50</p> <p>4 to 8:00. Is that okay, 2:00 o'clock in the afternoon?</p> <p>5 A. Oh, yes, sir.</p> <p>6 Q. To 9:00. It's just simpler that way for me.</p> <p>7 A. Understood.</p> <p>8 Q. So, basically we're talking about seven hours</p> <p>9 to get this written statement?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And -- so, you read it. They tell you they're</p> <p>12 moving on to do a videotaped statement. And you say,</p> <p>13 "Thanks, guys. I appreciate it," and off you go?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Do you know if you talked to them again that</p> <p>16 evening?</p> <p>17 A. I believe I spoke to them after the interview,</p> <p>18 the videotaped interview was done, correct.</p> <p>19 Q. Okay. You take the information that you've</p> <p>20 gotten -- that you have received by fax. You prepared</p> <p>21 an affidavit. And to be fair, the affidavit has about</p> <p>22 one paragraph that's added to it from the information</p> <p>23 you gathered from Philadelphia?</p> <p>24 A. Correct, yes, sir.</p> <p>25 Q. You add that paragraph to it, to the affidavit</p>

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<p style="text-align: right;">222</p> <p>1 after reading the statement given by Mr. Mullis in</p> <p>2 Philadelphia. You add that one paragraph. Then you --</p> <p>3 and Detective --</p> <p>4 A. Almendarez.</p> <p>5 Q. -- Detective Almendarez can go find Judge Cox.</p> <p>6 Judge Cox swears here to the affidavit and then signs</p> <p>7 the warrant at approximately 9:15 p.m. that night?</p> <p>8 A. Yes, sir.</p> <p>9 Q. You guys come back to the Galveston courthouse?</p> <p>10 A. I believe I went straight to the station at</p> <p>11 that point.</p> <p>12 Q. Okay. You go to the station and -- you're</p> <p>13 talking about the Galveston police station?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And is that in the same complex as we're in</p> <p>16 right now?</p> <p>17 A. No, sir. It's one block over. It's at the</p> <p>18 other -- actually I guess they're all attached. I</p> <p>19 apologize. The other -- far end. I think y'all can</p> <p>20 walk through from one to the other with prisoners. I'm</p> <p>21 not sure. The other end. Not here.</p> <p>22 Q. So, but basically that's what I'm trying to</p> <p>23 make sure I understand. You leave. You get Judge Cox</p> <p>24 to sign the warrant. You come back to the overall</p> <p>25 justice complex?</p>	<p style="text-align: right;">224</p> <p>1 completed.</p> <p>2 Q. That's fair. Thank you.</p> <p>3 Okay. Are they calling you while they're</p> <p>4 doing the videotaped statement?</p> <p>5 A. No, sir.</p> <p>6 Q. All right. When they complete the videotaped</p> <p>7 statement, do you have a communication or a conversation</p> <p>8 with them after they complete the video statement?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Tell the jury about that.</p> <p>11 A. About the conversation after? He explained to</p> <p>12 me that they have an older --</p> <p>13 Q. "He" being?</p> <p>14 A. Detective Hesser. I apologize. That they have</p> <p>15 an older videotaped system and they were not going to be</p> <p>16 able to immediately e-mail me a copy of the videotaped</p> <p>17 statement. It would have to be transferred from VHS</p> <p>18 tape onto a disk and that he would Fed-Ex it to me</p> <p>19 overnight when he was done with that.</p> <p>20 Q. You found that a little surprising, I guess?</p> <p>21 A. A little.</p> <p>22 Q. I mean, it's Philadelphia.</p> <p>23 A. Yes, sir.</p> <p>24 Q. You -- this is not Philadelphia, this is</p> <p>25 Galveston. And we have the capabilities to download it</p>
<p style="text-align: right;">223</p> <p>1 A. Yes, sir.</p> <p>2 Q. Which includes the courthouse on the one end</p> <p>3 and the DA's Office and then on the other end has the</p> <p>4 Galveston PD?</p> <p>5 A. Yes, sir.</p> <p>6 Q. So, you come back to the facility. Would it be</p> <p>7 fair to say you get back by about 9:45?</p> <p>8 A. Fair to say.</p> <p>9 Q. When I say that, it might be 9:30, might be</p> <p>10 10:00 o'clock. But somewhere in that range you get back</p> <p>11 to -- you get back to this Galveston Justice Center?</p> <p>12 A. Correct.</p> <p>13 Q. Do you know at what time you have your next</p> <p>14 communication with the detectives in Philadelphia?</p> <p>15 A. I'm going to have to check. I don't recall.</p> <p>16 I believe that the phone conversation was done sometime</p> <p>17 in the road. And they explained to me they were going</p> <p>18 to send me the videotaped interview later on, but I'm</p> <p>19 not certain.</p> <p>20 Q. It's okay. I forget about the new-fangled cell</p> <p>21 phone concept.</p> <p>22 A. Yes, sir.</p> <p>23 Q. So, you're actually in communication on the</p> <p>24 road --</p> <p>25 A. I believe so, after the interview was</p>	<p style="text-align: right;">225</p> <p>1 and e-mail it and the other side --</p> <p>2 A. That's correct. Wasn't that shocking, to be</p> <p>3 honest.</p> <p>4 Q. Of course, when you're transporting him back,</p> <p>5 he doesn't have any clothes?</p> <p>6 A. I'm sorry?</p> <p>7 Q. When you're transporting him back -- and you</p> <p>8 guys take the time to go buy him some clothes?</p> <p>9 A. Clothed him, yes, sir.</p> <p>10 Q. Yes, because otherwise basically he's coming</p> <p>11 home naked because you've got the -- you've seized his</p> <p>12 clothing that he wore into the station, right?</p> <p>13 A. Well, no, sir. He had been provided the</p> <p>14 jailhouse clothing. But I didn't want to take that from</p> <p>15 Philadelphia PD.</p> <p>16 Q. I mean, you went above and you were trying to</p> <p>17 be as nice to him as possible, not just because he's an</p> <p>18 inmate or the target or the suspect in a terrible crime.</p> <p>19 You just didn't want to have to transport the guy in</p> <p>20 jail clothes. I mean, you went and bought the guy some</p> <p>21 clothes?</p> <p>22 A. Correct.</p> <p>23 Q. That's kind of a nice gesture, don't you think?</p> <p>24 A. I suppose so.</p> <p>25 Q. Okay. I wrote this down and I'm not sure I</p>

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<p style="text-align: right;">226</p> <p>1 understood it based on what you testified. Did you</p> <p>2 testify earlier, "I gave him locales and they took a</p> <p>3 statement"?</p> <p>4 I wrote that down. I wrote down in quotes, "I</p> <p>5 gave them locales," like you were talking to the</p> <p>6 Philadelphia PD and you were giving them like locales --</p> <p>7 A. Referring to locations?</p> <p>8 Q. Could be.</p> <p>9 A. Possibly. Again, I think I clarified that a</p> <p>10 little bit. I recall saying that the incident happened</p> <p>11 in Galveston, but not giving them specifics as to the</p> <p>12 exact location that Alijah was found.</p> <p>13 Q. Okay. Did you also testify previously that we</p> <p>14 had ongoing talks with the homicide investigators in</p> <p>15 Philadelphia?</p> <p>16 A. In the beginning, yes, sir.</p> <p>17 Q. How did Luck get assigned to this case?</p> <p>18 A. Luck was -- at the time I believe Sergeant Luck</p> <p>19 was the actual east end supervisor.</p> <p>20 Q. Okay. And what does that mean to me, "east end</p> <p>21 supervisor"?</p> <p>22 A. The patrol officers have supervisors that cover</p> <p>23 different areas and have -- back when I was here, we had</p> <p>24 an east end supervisor, a central supervisor and a west</p> <p>25 end supervisor. And your supervisors were in charge of</p>	<p style="text-align: right;">228</p> <p>1 no -- supervisors are allowed to overlap and assist in</p> <p>2 other areas. If one supervisor is busy in an area, then</p> <p>3 other supervisors can come out to assist. It's not</p> <p>4 uncommon for a supervisor to help with a case like this.</p> <p>5 Q. I wouldn't disagree with you, but who do these</p> <p>6 two guys answer to?</p> <p>7 A. Whoever the patrol lieutenant is at the time.</p> <p>8 Q. So, would it be in -- you know, law</p> <p>9 enforcement, like fire fighting, is sort of -- it's sort</p> <p>10 of a quasi-military operation? It's a chain of command,</p> <p>11 correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Somebody's got to be at the top of the food</p> <p>14 chain and authority moves down from there, right?</p> <p>15 A. That's correct.</p> <p>16 Q. And the way things are supposed to work is that</p> <p>17 there's a reason that there's a lieutenant, right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Because the lieutenant knows things that</p> <p>20 sergeants don't know about what's going on in and around</p> <p>21 the district, various districts?</p> <p>22 A. Maybe, maybe not.</p> <p>23 Q. Well --</p> <p>24 A. Not to say the lieutenant would know more about</p> <p>25 what's going on in the district than the sergeant. The</p>
<p style="text-align: right;">227</p> <p>1 those respective areas. If a major call came out, then</p> <p>2 those supervisors would go down there.</p> <p>3 Q. Okay. So, what was Kershaw's? He wasn't the</p> <p>4 east end --</p> <p>5 A. He was close to the area and had been in the</p> <p>6 department for a long time and was pretty experienced.</p> <p>7 So, he went by.</p> <p>8 Q. I mean, but isn't he the same person as Luck?</p> <p>9 I mean, aren't they equal in position at that time?</p> <p>10 A. In equal position, yes, sir, correct. They</p> <p>11 were both patrol sergeants, yes, sir.</p> <p>12 Q. So, Luck was over the east end which might, for</p> <p>13 lack of a better word, give him jurisdiction, sort of,</p> <p>14 or authority to be out there, right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. But you didn't assign Luck to this case?</p> <p>17 A. I didn't assign anybody to the case, sir.</p> <p>18 Q. Correct. You didn't assign anybody. Just 13</p> <p>19 people showed up?</p> <p>20 A. Correct.</p> <p>21 Q. If Luck was over the east end back in '08,</p> <p>22 where was Kershaw? What was his involvement?</p> <p>23 A. He could have been at the station at the time</p> <p>24 of the call. He could have been closer. I'm not sure</p> <p>25 where he was when the actual call came out. There's</p>	<p style="text-align: right;">229</p> <p>1 sergeant probably has more knowledge about what's</p> <p>2 actually going on in the district. But the lieutenant</p> <p>3 would still be his supervisor.</p> <p>4 Q. Correct. And when we're in supervisory</p> <p>5 positions, the whole purpose of being in a supervisory</p> <p>6 position or being the person at the greater authority is</p> <p>7 to have greater authority, right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. I mean, somebody's got to be in control --</p> <p>10 A. Correct.</p> <p>11 Q. -- right? We can't have the tail wagging the</p> <p>12 dog, right?</p> <p>13 A. Yes, sir.</p> <p>14 Q. As we see in some operations, right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. It's got to be the other way around?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Right? So, it wouldn't have been -- I mean,</p> <p>19 shouldn't the lieutenant have said -- it's hypothetical.</p> <p>20 In a quasi-military organization such as the Galveston</p> <p>21 Police Department or the Houston Police Department or</p> <p>22 the Sheriff's Department, there's a chain of command</p> <p>23 where people give other people assignments?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. And in this case, do you know whether or</p>

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<p style="text-align: right;">230</p> <p>1 not the lieutenant, the supervising lieutenant gave</p> <p>2 authority to Kershaw to be at the scene or whether</p> <p>3 Kershaw just took it and made it his own authority?</p> <p>4 A. I'm not certain if the lieutenant kind of told</p> <p>5 him or not to. I guess it all depends on the location</p> <p>6 of where people are and if they're close, they'll come</p> <p>7 by and assist with something like this.</p> <p>8 Q. You work for the FBI?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Who do you answer to?</p> <p>11 MS. CAMERON: Your Honor, I object on the</p> <p>12 grounds of relevance.</p> <p>13 THE COURT: Mr. Bourque?</p> <p>14 MR. BOURQUE: Judge, it has to do with 13</p> <p>15 people contaminating an area built for four.</p> <p>16 MS. CAMERON: Your Honor, I'm going to</p> <p>17 object to the sidebar.</p> <p>18 THE COURT: That's sustained, but I will</p> <p>19 allow some questioning in this area. You may proceed.</p> <p>20 MR. BOURQUE: Thank you, Judge.</p> <p>21 Q. (BY MR. BOURQUE) You work for the Federal</p> <p>22 Bureau of Investigation?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Who do you answer to there?</p> <p>25 A. I answer to a supervisor that was down in</p>	<p style="text-align: right;">232</p> <p>1 MR. BOURQUE: I'll pass the witness, Your</p> <p>2 Honor.</p> <p>3 THE COURT: Ms. Cameron?</p> <p>4 MS. CAMERON: Thank you, Your Honor. May</p> <p>5 I approach the witness?</p> <p>6 THE COURT: You may.</p> <p>7 FURTHER DIRECT EXAMINATION</p> <p>8 BY MS. CAMERON:</p> <p>9 Q. Special Agent, I'd like to start with seeing if</p> <p>10 we can clarify a little bit about State's Exhibit</p> <p>11 No. 47, which is the arrest warrant, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And it was signed at 9:15 p.m., is that</p> <p>14 correct, on February 1st, 2008?</p> <p>15 A. Yes, ma'am, that's correct.</p> <p>16 Q. And do you know whether or not the affidavit</p> <p>17 was begun earlier than when you received the final</p> <p>18 information from the Defendant's statement?</p> <p>19 A. I believe it was, yes, ma'am.</p> <p>20 Q. And if you can look at -- I believe it's a</p> <p>21 two-page affidavit, can you just state how much of that</p> <p>22 two pages was information that was received from</p> <p>23 Philadelphia, Pennsylvania?</p> <p>24 A. The entire first page is not. That was stuff</p> <p>25 that we had knowledge of prior to that. And the</p>
<p style="text-align: right;">231</p> <p>1 Houma.</p> <p>2 Q. Okay. And he's got a supervisor, also?</p> <p>3 A. Correct.</p> <p>4 Q. Okay? And so, you don't just go off on your</p> <p>5 own doing the things that you want to, right?</p> <p>6 A. We're pretty much on our own out there, sir.</p> <p>7 Q. If you get into a situation that is</p> <p>8 supposed -- you're answering to a supervisor, if you've</p> <p>9 gone outside what you know your realm of responsibility</p> <p>10 to be, there's trouble, isn't there?</p> <p>11 A. Like I said, we -- in the office that I'm at,</p> <p>12 we handle things on our own out there, sir.</p> <p>13 Q. All right. I think one of the things that you</p> <p>14 testified to previously on direct is that your job was</p> <p>15 to check and make sure that only the people present were</p> <p>16 people that belonged there?</p> <p>17 A. I believe I said that, yes, sir.</p> <p>18 Q. What -- I mean, what doesn't belong there? If</p> <p>19 there's 13 people on a crime scene like this, how -- did</p> <p>20 you tell some people, "You're not welcome inside the</p> <p>21 ropes"?</p> <p>22 A. Yes, sir.</p> <p>23 Q. So, there had been more than 13 present?</p> <p>24 A. No, sir. I listed everybody who's out there,</p> <p>25 whether they're stepping in the crime scene tape or not.</p>	<p style="text-align: right;">233</p> <p>1 majority of the second page was not received either or</p> <p>2 was information we had prior to Philadelphia contacting</p> <p>3 us. It would be just this final paragraph that was</p> <p>4 information we got from Philadelphia.</p> <p>5 Q. All right. So, you don't know of your own</p> <p>6 personal knowledge when Joel Bennett may have started to</p> <p>7 work on this affidavit?</p> <p>8 A. That's correct. I'm not certain, but I can say</p> <p>9 that I believe that we started earlier than actually</p> <p>10 waiting on the statement to be turned in.</p> <p>11 Q. Now, I want to direct your attention to the</p> <p>12 fax. Does this document show the fax that you received</p> <p>13 from Detective Hesser?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. And what is that, sir? Is that the statement</p> <p>16 of the Defendant that you were waiting for that you then</p> <p>17 added to that arrest warrant affidavit?</p> <p>18 A. That's correct.</p> <p>19 Q. And can you tell the jury when it is -- what is</p> <p>20 the time that's up at the top?</p> <p>21 A. Shows to be 8:45 p.m. on February 1st.</p> <p>22 Q. And you've traveled from here to Philadelphia,</p> <p>23 correct?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. And can you tell the jury what the time</p>

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<p style="text-align: right;">234</p> <p>1 difference is? Is it an hour later?</p> <p>2 A. I believe there are -- I'm in Arizona. And we</p> <p>3 don't do time zone changes. Are they an hour ahead of</p> <p>4 us?</p> <p>5 Q. We can get the Court to take judicial notice</p> <p>6 and we will provide that. But do you know whether or</p> <p>7 not when you received this, even though it says</p> <p>8 8:45 p.m., do you know whether or not it was 7:45 p.m.</p> <p>9 Houston time?</p> <p>10 A. Yeah. I do not unless I have that in my notes.</p> <p>11 Q. Okay. Well, can you check and see if by chance</p> <p>12 you have in your notes when you received it from</p> <p>13 Philadelphia, because I think the Defense is trying</p> <p>14 to --</p> <p>15 MR. BOURQUE: Let's not have sidebar about</p> <p>16 what the Defense is trying to do.</p> <p>17 THE COURT: Sustained.</p> <p>18 MR. BOURQUE: Ask the jury to be</p> <p>19 instructed to disregard the sidebar of counsel.</p> <p>20 THE COURT: Please disregard the last</p> <p>21 statement made by counsel.</p> <p>22 You may ask another question.</p> <p>23 Q. (BY MS. CAMERON) Was there some questioning</p> <p>24 by opposing counsel as to how quickly you were able to</p> <p>25 get the information, receive it from Philadelphia, type</p>	<p style="text-align: right;">236</p> <p>1 Detective Hesser?</p> <p>2 A. No, ma'am.</p> <p>3 Q. And -- so, you didn't know anything about the</p> <p>4 manner and means, just what you had seen at the autopsy?</p> <p>5 A. That's correct.</p> <p>6 Q. And let's talk about the search of the vehicle.</p> <p>7 Did you know what would be in that vehicle?</p> <p>8 A. I had no idea.</p> <p>9 Q. Were you at any time directing Detective</p> <p>10 McNamee as to what to look for other than to make</p> <p>11 certain that it's preserved so it can be processed?</p> <p>12 A. No, ma'am. We just simply wanted the car to be</p> <p>13 held so that we could do it ourselves. And the B.B. gun</p> <p>14 incident came up because Detective -- I believe that was</p> <p>15 McNamee, I apologize, called me and said there's a B.B.</p> <p>16 gun in the car. Our policy says we have to take it out.</p> <p>17 So, I told him to take it out and don't touch anything</p> <p>18 else and hold it for us.</p> <p>19 Q. And let's talk about the crime scene. Whose</p> <p>20 responsibility was it out there to actually collect the</p> <p>21 evidence?</p> <p>22 A. From the vehicle?</p> <p>23 Q. Yes -- no, no. I'm sorry. Now I'm to the</p> <p>24 crime scene here in Galveston.</p> <p>25 A. Yes, ma'am. That would be Scott Pena, the ID</p>
<p style="text-align: right;">235</p> <p>1 it into an affidavit, get in your car, go to meet the</p> <p>2 Judge, get the Judge to sign it and then to come back?</p> <p>3 A. Was there questioning? Yes, ma'am.</p> <p>4 Q. All right. So, do you know from looking at</p> <p>5 your records or from your offense report whether or not</p> <p>6 you would have received it at a different time which</p> <p>7 would have been Houston time?</p> <p>8 A. I have that at 8:45 I received a fax from</p> <p>9 Philadelphia.</p> <p>10 Q. All right. So, when you've got -- you've got</p> <p>11 8:45. And do you know whether or not that is the time</p> <p>12 here or the time that it was received on the document?</p> <p>13 A. That would be the time here.</p> <p>14 Q. All right. But again, there's one paragraph</p> <p>15 that appears to be added?</p> <p>16 A. On the affidavit, yes, ma'am.</p> <p>17 Q. Now I'd like to talk to you a little bit about</p> <p>18 the information that you're conveying to Philadelphia.</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. And at the time that you're talking to</p> <p>21 Detective Hesser when he is going to be interviewing the</p> <p>22 Defendant, do you know of your own personal knowledge</p> <p>23 that Alijah Mullis has had his head stomped on?</p> <p>24 A. No, ma'am.</p> <p>25 Q. Is that anything that you communicated to</p>	<p style="text-align: right;">237</p> <p>1 officer.</p> <p>2 MS. CAMERON: If I may approach, Your</p> <p>3 Honor?</p> <p>4 THE COURT: You may.</p> <p>5 Q. (BY MS. CAMERON) And I'm going to show you</p> <p>6 State's Exhibit No. 55 just as kind of an example of</p> <p>7 what the Defense attorney was showing you when he said,</p> <p>8 "Did you take this? Did you pick this up? What was the</p> <p>9 significance of different pieces of items that were</p> <p>10 found at the location?" Do you remember those</p> <p>11 questions?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. Based on your knowledge of this location,</p> <p>14 Cherry Hill --</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. -- would it be fair to say that it's kind of a</p> <p>17 trash dumping ground, that there's lot of trash out</p> <p>18 there?</p> <p>19 A. There was a lot of debris out there at the</p> <p>20 time, yes.</p> <p>21 Q. So, would it be fair to say that there was a</p> <p>22 lot of trash out there? Did you think it all was</p> <p>23 associated with this crime or just people dumping stuff</p> <p>24 out there?</p> <p>25 A. Not all of it was associated with the crime.</p>

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<p style="text-align: right;">238</p> <p>1 Q. And whose responsibility was it to collect the</p> <p>2 evidence?</p> <p>3 A. Scott Pena.</p> <p>4 Q. And did you have confidence that Scott Pena</p> <p>5 could do a professional job of assessing the crime</p> <p>6 scene?</p> <p>7 A. Yes, ma'am.</p> <p>8 MR. BOURQUE: Objection. It's irrelevant.</p> <p>9 THE COURT: Overruled.</p> <p>10 Q. (BY MS. CAMERON) Now, the Defense attorney was</p> <p>11 saying essentially, I think he was questioning you and</p> <p>12 saying that this was -- this crime scene of yours was</p> <p>13 contaminated by 13 officers. Do you recall being asked</p> <p>14 that?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Can you tell the jury with the officers that</p> <p>17 were out there and what you maintained with the crime</p> <p>18 scene tape, was it -- did you consider this scene to be</p> <p>19 contaminated?</p> <p>20 A. No, ma'am, I did not.</p> <p>21 Q. And tell the jury why, if you've got all these</p> <p>22 officers out there, including two crime scene officers</p> <p>23 and several sergeants, why you didn't consider it to be</p> <p>24 contaminated or disturbed or compromised?</p> <p>25 A. Everybody that's out there is out there for</p>	<p style="text-align: right;">240</p> <p>1 Q. Do you know of your own personal knowledge</p> <p>2 whether or not he did what he was directed to do by</p> <p>3 Officer Pena?</p> <p>4 A. I do not know if he did it as directed by Pena</p> <p>5 or if he did it on his own. But what I recall the</p> <p>6 purpose of it being was to determine the sex of Alijah.</p> <p>7 At the time we didn't know whether we had a male or a</p> <p>8 female that was -- that had died out there. That's</p> <p>9 important for us to know as soon as we can.</p> <p>10 Q. Now, let's talk about the Defendant's demeanor</p> <p>11 and how he was with you.</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. Did you have an occasion to review the audio</p> <p>14 videotape that the Defendant did with Detectives Rodden</p> <p>15 and Hesser?</p> <p>16 A. Yes, ma'am, I did.</p> <p>17 Q. Did you observe the Defendant's demeanor during</p> <p>18 that entire interview?</p> <p>19 A. I did.</p> <p>20 Q. Can you tell the jury, you know, basically how</p> <p>21 he was treated by those detectives?</p> <p>22 A. He was treated kindly. I mean, there was a</p> <p>23 rapport that was built and they were communicating back</p> <p>24 and forth very professionally.</p> <p>25 Q. And even though when you took custody of him,</p>
<p style="text-align: right;">239</p> <p>1 purposes of solving the case. So, people are given</p> <p>2 different roles and people handle different parts of the</p> <p>3 investigation. Not all 13 people that are listed on</p> <p>4 there necessarily even stepped foot across the crime</p> <p>5 scene. Some of them just stand there and are there</p> <p>6 for -- pick their brains if we have any questions or if</p> <p>7 we come up with something or other -- if other things</p> <p>8 happen.</p> <p>9 So, assignments are given no matter how many</p> <p>10 people are out there. I don't turn help away if I can</p> <p>11 get help. Sergeant Kershaw is out there. Sergeant Luck</p> <p>12 was out there. We utilized the resources that we had</p> <p>13 out there at the time.</p> <p>14 Q. So, as the detective out there in control of</p> <p>15 the scene or the lead detective, if you had seen</p> <p>16 something go on, if you had seen something that you in</p> <p>17 your professional opinion felt was a compromise to the</p> <p>18 scene, what would you have done?</p> <p>19 A. I would have kicked them out of the scene for</p> <p>20 starters and at least noted what they had done, what</p> <p>21 they had touched. And that's why I initially when I got</p> <p>22 out there put up the crime scene tape.</p> <p>23 Q. Now, you were asked about the actions of</p> <p>24 Sergeant Kershaw touching the baby?</p> <p>25 A. Yes, ma'am.</p>	<p style="text-align: right;">241</p> <p>1 did you make it clear to him that you weren't there to</p> <p>2 interview him?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. And did he continue to be talkative?</p> <p>5 A. Yes, ma'am, he did.</p> <p>6 Q. And was there any difference at all in the</p> <p>7 demeanor that he had with the detectives in the</p> <p>8 interview versus the demeanor that he had with you-all</p> <p>9 as you took him back to Houston?</p> <p>10 A. Yes, ma'am, his demeanor was different.</p> <p>11 Q. And can you kind of just describe a little bit</p> <p>12 of how his demeanor was different?</p> <p>13 A. Sure. What I observed in the interview was his</p> <p>14 demeanor was he was using a lot of big words and things</p> <p>15 that you would use if you were actually a police officer</p> <p>16 using words like "departed." And when he was with me,</p> <p>17 it was -- he was using a lot of slang words and talking</p> <p>18 -- you know, I mean, just talking like he was born and</p> <p>19 raised on the streets, using a lot of slang and it was</p> <p>20 just a complete difference than what he was doing when</p> <p>21 he was in the interview with the Philadelphia</p> <p>22 detectives.</p> <p>23 Q. So, it seemed to be -- you could notice a</p> <p>24 difference?</p> <p>25 A. Yes, ma'am.</p>

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<p style="text-align: right;">242</p> <p>1 Q. Let's talk about -- do you recall him saying</p> <p>2 anything -- I think you stated that you didn't observe</p> <p>3 any emotion by him, did you?</p> <p>4 A. No, ma'am. He never cried or anything like</p> <p>5 that.</p> <p>6 Q. Was he talkative, though?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. You know, when you say he didn't cry, did he</p> <p>9 show any emotion that you observed?</p> <p>10 A. No. I mean, like I said, he was just talking</p> <p>11 and I couldn't -- not that I tried, but he just</p> <p>12 continued to talk using a lot of slang and acting</p> <p>13 completely different than what I had seen on the video.</p> <p>14 Q. Did he ask about his son, Alijah, at all?</p> <p>15 A. No, ma'am.</p> <p>16 Q. Did he ask about Caren Kohberger?</p> <p>17 A. No, he did not.</p> <p>18 Q. Did he say anything to you -- you talk about</p> <p>19 emotion. Did he say anything about crying or --</p> <p>20 A. He had made a statement before -- right before</p> <p>21 we got on the flight that he was done crying and it was</p> <p>22 time to be tough.</p> <p>23 Q. Had he made any other --</p> <p>24 MR. BOURQUE: Excuse me.</p> <p>25 I'm going to have to object to that under</p>	<p style="text-align: right;">244</p> <p>1 continued to talk.</p> <p>2 Q. And when you say you weren't questioning him,</p> <p>3 who was the other officer that was accompanying you and</p> <p>4 that was with him at the time?</p> <p>5 A. Officer Pena and I did the actual escort, but</p> <p>6 the whole group was there; myself, Sergeant Almendarez</p> <p>7 and Sergeant Jones and Scott Pena.</p> <p>8 Q. Was anybody else asking him questions? Was</p> <p>9 that in response to any law enforcement questioning?</p> <p>10 A. No, ma'am.</p> <p>11 Q. Did he make any other spontaneous statements?</p> <p>12 A. Yes, ma'am, he did.</p> <p>13 Q. And would that be a statement that he made to</p> <p>14 Officer Pena?</p> <p>15 A. Yes, ma'am, in my presence.</p> <p>16 Q. And what is it that you remember him saying?</p> <p>17 A. I note in my report with quote marks on it that</p> <p>18 he turned himself in because he was tired of running.</p> <p>19 And the quote was that he wanted to do the right thing.</p> <p>20 Q. And what was the context of him saying that?</p> <p>21 A. With regards to his arrest for capital murder.</p> <p>22 MS. CAMERON: If I may have a moment, Your</p> <p>23 Honor?</p> <p>24 THE COURT: You may.</p> <p>25 MS. CAMERON: If I may approach the</p>
<p style="text-align: right;">243</p> <p>1 38.22. This guy's clearly in custody at this point.</p> <p>2 And we don't have any contextual nature for that and</p> <p>3 I've never seen that in a report. So, I've got to</p> <p>4 object under 38.22.</p> <p>5 MS. CAMERON: May I ask a question?</p> <p>6 THE COURT: Counsel, approach for just a</p> <p>7 moment, please.</p> <p>8 (Discussion at the bench, off the record)</p> <p>9 (Open court, Defendant and jury present)</p> <p>10 THE COURT: Ladies and gentlemen, I've</p> <p>11 talked to the attorneys. It looks like they probably</p> <p>12 have about 25 more minutes with this witness. It is now</p> <p>13 seven minutes after 5:00. Let me get a feel from y'all</p> <p>14 how you're doing. Are you willing to keep on going for</p> <p>15 a while or do we need to come back in the morning?</p> <p>16 Everybody ready to press on? Okay. Thank you.</p> <p>17 You may continue.</p> <p>18 MS. CAMERON: Thank you, Your Honor.</p> <p>19 Q. (BY MS. CAMERON) I want to go back to the</p> <p>20 statement that you just shared with the jury.</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Were you questioning him when he made that</p> <p>23 statement?</p> <p>24 A. No, ma'am. I know that -- that in my report</p> <p>25 that he was not being asked any questions. He just</p>	<p style="text-align: right;">245</p> <p>1 witness, Your Honor?</p> <p>2 THE COURT: You may.</p> <p>3 Q. (BY MS. CAMERON) If you could refer to your</p> <p>4 offense report at your notations starting with 1920?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. And can you tell the jury, 1920, that would be</p> <p>7 military time and that would be what time?</p> <p>8 A. 7:20 p.m.</p> <p>9 Q. Did you make a notation if you can refresh your</p> <p>10 memory as to whether or not you knew at that time at</p> <p>11 7:20, which would be, I believe, Central Standard Time</p> <p>12 for us --</p> <p>13 MR. BOURQUE: I apologize for</p> <p>14 interrupting. I've got the offense report. Can you</p> <p>15 tell me what page that is on?</p> <p>16 MS. CAMERON: That is page 11 of 21.</p> <p>17 MR. BOURQUE: Thank you.</p> <p>18 Q. (BY MS. CAMERON) That would be 7:20, correct?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. And are you making a notation at that time, if</p> <p>21 you need to refresh your memory, that the statement was</p> <p>22 almost completed?</p> <p>23 A. That's correct.</p> <p>24 Q. And I'm going to refer you to the fax that you</p> <p>25 received from Eastern Standard Time?</p>

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<p style="text-align: right;">246</p> <p>1 A. Yes, ma'am.</p> <p>2 Q. And do you know whether or not Philadelphia,</p> <p>3 Pennsylvania, is Eastern Standard Time?</p> <p>4 A. It is.</p> <p>5 Q. All right. And you're receiving it at 8:45,</p> <p>6 correct?</p> <p>7 A. I believe so, yes, ma'am.</p> <p>8 Q. Well --</p> <p>9 A. 8:45 their time.</p> <p>10 Q. Their time. This is coming from Homicide</p> <p>11 Division Fax No. 21 --</p> <p>12 MR. BOURQUE: Can we have him testify as</p> <p>13 opposed to the State?</p> <p>14 THE COURT: Sustained.</p> <p>15 Q. (BY MS. CAMERON) Can you tell the jury where</p> <p>16 this is coming from?</p> <p>17 A. From the Homicide Division from the</p> <p>18 Philadelphia Police Department.</p> <p>19 Q. And that fax number, is that a fax number from</p> <p>20 Philadelphia, Pennsylvania?</p> <p>21 A. It appears to be.</p> <p>22 Q. And would the time denoted on that be from</p> <p>23 Philadelphia, Pennsylvania?</p> <p>24 MR. BOURQUE: Objection. It's asked and</p> <p>25 answered. He already testified he received it at 8:45</p>	<p style="text-align: right;">248</p> <p>1 MR. BOURQUE: If it please the Court. May</p> <p>2 I approach the witness, Judge?</p> <p>3 THE COURT: Yes, sir.</p> <p>4 FURTHER CROSS-EXAMINATION</p> <p>5 BY MR. BOURQUE:</p> <p>6 Q. How are you doing?</p> <p>7 A. I'm doing swell. Yourself?</p> <p>8 Q. I think I'm okay. Look. Let me direct your</p> <p>9 attention to page 19 of your report.</p> <p>10 A. Yes, sir.</p> <p>11 Q. It starts on -- that's February 1st, 2008,</p> <p>12 right?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Now, when you write down 1100 hours, are you</p> <p>15 writing your time or are you writing Philadelphia's</p> <p>16 time?</p> <p>17 A. My time, sir.</p> <p>18 Q. When you write 1145, is that your time or is</p> <p>19 that Philadelphia's time?</p> <p>20 A. That would be my time.</p> <p>21 Q. Okay. When you write 1350, is that your time</p> <p>22 or is that Philadelphia's time?</p> <p>23 A. My time.</p> <p>24 Q. When you write 1626, is that your time or is</p> <p>25 that Philadelphia's time?</p>
<p style="text-align: right;">247</p> <p>1 Galveston time.</p> <p>2 THE COURT: I'm going to overrule the</p> <p>3 objection.</p> <p>4 Because the issue has been raised, if you</p> <p>5 can answer the question, you may.</p> <p>6 THE WITNESS: Yes, sir.</p> <p>7 Q. (BY MS. CAMERON) So, do you know whether or</p> <p>8 not we are in the same time zone as Philadelphia,</p> <p>9 Pennsylvania, in Eastern Standard Time?</p> <p>10 A. We are not.</p> <p>11 Q. Okay. So, does it refresh your memory that</p> <p>12 you're going from the statement almost being completed</p> <p>13 at 7:20 --</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. -- your time --</p> <p>16 A. Correct.</p> <p>17 Q. -- to then saying now at 8:45 you're receiving</p> <p>18 the fax?</p> <p>19 A. It is very possible that I wrote 2045 on my</p> <p>20 notes there to reflect the time that's up here as</p> <p>21 opposed to the actual time zone difference, which would</p> <p>22 have been 7:45 here in Texas.</p> <p>23 MS. CAMERON: Thank you, sir.</p> <p>24 I'll pass the witness.</p> <p>25 THE COURT: Mr. Bourque?</p>	<p style="text-align: right;">249</p> <p>1 A. That would be our time.</p> <p>2 Q. If you write 1900, are you writing</p> <p>3 Philadelphia's time or are you writing your time?</p> <p>4 A. That's our time.</p> <p>5 Q. So, it makes perfectly good sense when you</p> <p>6 write 1920, you're talking about your time, not</p> <p>7 Philadelphia's time?</p> <p>8 A. Correct.</p> <p>9 Q. When you write 2045, you're talking about your</p> <p>10 time, not Philadelphia's time, correct?</p> <p>11 A. I may have been talking about Philadelphia's</p> <p>12 time --</p> <p>13 Q. Well, when you testified on direct --</p> <p>14 MS. CAMERON: Your Honor, can the witness</p> <p>15 be allowed to finish his answer?</p> <p>16 THE COURT: Were you finished?</p> <p>17 THE WITNESS: I was just saying, I may</p> <p>18 have been writing Philadelphia's time on that one based</p> <p>19 on what was on the top of the fax.</p> <p>20 Q. (BY MR. BOURQUE) Okay. Well, let's go to</p> <p>21 February 3rd, 2008, when you write 74 -- 07:45, you</p> <p>22 writing Philadelphia time, are you writing Texas time?</p> <p>23 A. That would be Texas time, sir.</p> <p>24 Q. When you're writing 8:30 on February the 4th,</p> <p>25 are you writing Philadelphia time or are you writing</p>

<p style="text-align: right;">250</p> <p>1 Texas time?</p> <p>2 A. Texas time, sir.</p> <p>3 Q. Do you want to go through the whole offense</p> <p>4 report and write whose time you're writing on it?</p> <p>5 MS. CAMERON: Your Honor, I'm going to</p> <p>6 object. This is argumentative.</p> <p>7 THE COURT: Overruled.</p> <p>8 Q. (BY MR. BOURQUE) Do you want to go through the</p> <p>9 whole offense report?</p> <p>10 A. Not necessarily.</p> <p>11 Q. You'd agree with me that when you testified on</p> <p>12 cross-examination just a few minutes ago when I asked</p> <p>13 you what time you received it, you said you received it</p> <p>14 at 8:45 Galveston time, correct?</p> <p>15 A. I -- possibly.</p> <p>16 Q. Did you say that?</p> <p>17 A. I don't recall if I said Galveston time. I did</p> <p>18 say 8:45 though, sir.</p> <p>19 Q. You said 8:45 Galveston time, didn't you?</p> <p>20 A. I believe so.</p> <p>21 Q. Yes?</p> <p>22 A. Yes, sir.</p> <p>23 Q. It's not until cross-examination when the</p> <p>24 Government help -- needs help over here, you decided</p> <p>25 maybe it was the wrong time?</p>	<p style="text-align: right;">252</p> <p>1 Galveston County time. Fair statement?</p> <p>2 A. That's correct.</p> <p>3 Q. Now, just so we're clear, on this notation</p> <p>4 that's on this fax line, you don't even know if that is</p> <p>5 Philadelphia time or whether that's Houston time, do</p> <p>6 you?</p> <p>7 A. That's correct.</p> <p>8 Q. I mean, you put down 2045. You've been in law</p> <p>9 enforcement for ten years at the time that you're</p> <p>10 involved in this investigation, right?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And you know that what time you put things down</p> <p>13 is important?</p> <p>14 A. Correct.</p> <p>15 Q. Right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. So, as we testified a few minutes ago on</p> <p>18 cross-examination, it appears that you received the</p> <p>19 report at 8:45. You finished the affidavit. You get it</p> <p>20 signed. You take it to Judge Cox within a 30-minute</p> <p>21 period and you have it signed -- the warrant signed by</p> <p>22 Judge Cox, right?</p> <p>23 A. That I had the warrant signed?</p> <p>24 Q. From the time that you received it from the</p> <p>25 time that you received the statement from Philadelphia</p>
<p style="text-align: right;">251</p> <p>1 MS. CAMERON: I object. That's</p> <p>2 argumentative and sidebar.</p> <p>3 THE COURT: Sustained.</p> <p>4 MS. CAMERON: Can I ask that the jury be</p> <p>5 told to disregard that last statement by opposing</p> <p>6 counsel?</p> <p>7 THE COURT: If you will ask me.</p> <p>8 MS. CAMERON: Yes. I'm asking you, Judge.</p> <p>9 THE COURT: That will be granted.</p> <p>10 Please disregard that last statement.</p> <p>11 MR. BOURQUE: I apologize to the Court and</p> <p>12 to counsel.</p> <p>13 THE COURT: Accepted.</p> <p>14 Q. (BY MR. BOURQUE) Basically what we have here</p> <p>15 is well over 100 different time assignments to your</p> <p>16 offense report of about 22 pages, right? If you had</p> <p>17 four --</p> <p>18 A. I would have to count them.</p> <p>19 Q. Let me help you a little bit.</p> <p>20 A. Yes, sir.</p> <p>21 Q. If you had four -- or let's see. If you had</p> <p>22 four assignments per page, you would be somewhere around</p> <p>23 80-something pages, 80-something time zones?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay? So, in each one of those, you put down</p>	<p style="text-align: right;">253</p> <p>1 to the time you got the Judge to sign it was about 30</p> <p>2 minutes?</p> <p>3 A. Correct, yes, sir.</p> <p>4 Q. Okay. Thank you.</p> <p>5 So, when -- if you get it signed at 9:15, the</p> <p>6 warrant --</p> <p>7 A. Yes, sir.</p> <p>8 Q. -- then you must have had -- you must have</p> <p>9 received it, the statement from Philadelphia at 8:45</p> <p>10 because that's a 30-minute time slot. Fair statement?</p> <p>11 A. I believe so.</p> <p>12 Q. Okay. That's fine.</p> <p>13 Now, so that we're clear on this, it wasn't</p> <p>14 just the detective from the Homicide Division in</p> <p>15 Galveston talking to the detective in the Homicide</p> <p>16 Division in Philadelphia, was it?</p> <p>17 A. I'm sorry?</p> <p>18 Q. Those aren't the only two parties involved in</p> <p>19 communicating with one another. We had the DA's Office</p> <p>20 involved in this investigation?</p> <p>21 A. Yes, sir, that's correct.</p> <p>22 Q. And in taking this statement, right?</p> <p>23 A. In taking the statement?</p> <p>24 Q. Yeah. Assisting in taking the statement?</p> <p>25 A. Yes, sir.</p>

<p style="text-align: right;">254</p> <p>1 Q. Because you know you get a phone call at 1:50 2 and I want to use the number 2:00 o'clock because it's 3 easier for me that way. 4 A. Yes, sir. 5 Q. But if you get the statement that -- you're 6 notified at 2:00 o'clock that there's something going 7 on, you've testified previously that you got Mr. Bennett 8 involved by 2:05 or 2:10? 9 A. Yes, sir. 10 Q. Okay. Some five or ten minutes later, right? 11 A. Yes, sir. 12 Q. You know that Bennett is typing the affidavit 13 that's going to be attached to the warrant at 14 9:00 o'clock, right? 15 A. Yes, sir. 16 Q. So, Bennett is typing the affidavit. That's 17 seven hours that Bennett's involved in the case on a 18 hands-on basis, right? 19 A. That's correct. 20 Q. And that's before you guys get in the car and 21 drive to find Judge Cox, right? 22 A. Yes, sir. 23 Q. Now, Judge Cox knew y'all were coming, I 24 assume? 25 A. Correct.</p>	<p style="text-align: right;">256</p> <p>1 closely monitoring everything. They've got their hands 2 on everything that's happening. Fair statement? 3 A. Everything that's happening in Texas. 4 Q. Yes. 5 A. Yes, sir, correct. 6 MR. BOURQUE: Okay. Just one moment, 7 Judge. 8 Q. (BY MR. BOURQUE) Okay. What were the three 9 statements that he just volunteered? 10 A. I'm sorry? I believe he only gave two. 11 Q. Okay. What was the first one? 12 A. Wanted to do the right thing. 13 Q. That's it. And then -- 14 A. And the other one was he was done crying. It 15 was time to be tough. 16 Q. Can you show that to me in your 21 pages 17 that -- 18 A. I do not have that in my report, sir. 19 Q. Well, you have the one about he wanted to do 20 the right thing? 21 A. That's correct. 22 Q. You would agree with me a 21-page offense 23 report, that took some time, right? 24 A. It's an ongoing report. So, you add to it each 25 time you do something. It's not all typed up at one</p>
<p style="text-align: right;">255</p> <p>1 Q. I mean y'all called and said, "We're on our 2 way, Judge"? 3 A. Yes, sir. 4 Q. So, he knew you guys were coming? 5 A. Correct. 6 Q. You didn't wake him up in his nightgown? 7 A. No, sir. 8 Q. Okay. So, you guys go -- when we're talking 9 about you guys, we're not just talking about you and 10 Detective Almendarez, not just the two of you, but also 11 you had Joel Bennett in the car, Joel Bennett, the First 12 Assistant District Attorney for the Galveston County 13 DA's Office? 14 A. Correct. 15 Q. He's in the car? 16 A. Yes, sir. 17 Q. Is he driving? 18 A. I don't recall. I don't know why I'm foggy on 19 that. I really don't recall where Judge Cox lives or 20 who drove. I don't think I drove. 21 Q. Well, in all fairness, it's been three years? 22 A. Yes, sir. 23 Q. Okay. So, don't beat yourself up over that. 24 Basically what we do know is that during that 25 period in excess of seven hours we have the DA's Office</p>	<p style="text-align: right;">257</p> <p>1 time. 2 Q. Right. But the statement that you put in there 3 is -- the only statement that I can see in your report 4 is that he wanted to do the right thing? 5 A. Yes, sir. 6 Q. And when I say "wanted to do the right thing," 7 I'm talking about Mr. Mullis seated to my right? 8 A. Yes, sir. 9 Q. Okay. And then this other part about -- it was 10 -- what was it? 11 A. That he was done crying. It was time to be 12 tough. 13 Q. Done crying and time to be tough? 14 A. Yes, sir. 15 Q. That's really not in your report? 16 A. That's correct. I do not have that in my 17 report. 18 Q. Okay. And you would agree with me that a few 19 minutes ago as you apologized to the jury about being a 20 little foggy on what you do recall and that sort of 21 thing, it's been three years? 22 A. Yes, sir. 23 Q. Don't you think if it was really said, that 24 would have been something you would have put in your 25 report?</p>

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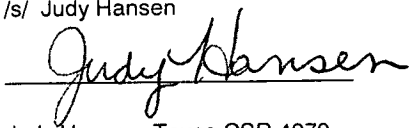
1 A. That was going to stick in my head no matter
 2 what. But I thought Officer Pena was going to put that
 3 in his report.
 4 Q. Well, did you read Officer Pena's report before
 5 you testified?
 6 A. Yes, sir.
 7 Q. And --
 8 A. I don't think it's in there.
 9 MR. BOURQUE: Thank you. I pass the
 10 witness?
 11 MS. CAMERON: Nothing further from this
 12 witness.
 13 THE COURT: May this witness be excused?
 14 MS. CAMERON: Yes, Your Honor.
 15 MR. BOURQUE: Yes, sir.
 16 THE COURT: Thank you. You may step down.
 17 THE WITNESS: Thank you.
 18 THE COURT: All right. Ladies and
 19 gentlemen, we're going to go ahead and break for the
 20 day. I'll ask you to be back here tomorrow morning
 21 ready to go at 9:00 a.m. Get here just a little before
 22 9:00, that would be helpful.
 23 Please remember the instructions that you
 24 are under. There may well be reports in the newspaper,
 25 on TV, on the radio or internet certainly. Please

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1 refrain from reviewing any of those reports. Any
 2 questions before I release you? All right. See y'all
 3 tomorrow morning at 9:00.
 4 (Proceedings adjourned)
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FIRM NAME

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1 REPORTER'S CERTIFICATE
 2 THE STATE OF TEXAS *
 3 COUNTY OF GALVESTON *
 4
 5 I, Judy Hansen, Official Court Reporter in and for
 6 the 122nd District Court of Galveston County, State of
 7 Texas, do hereby certify that the above and foregoing
 8 contains a true and correct transcription of all
 9 portions of evidence and other proceedings requested in
 10 writing by counsel for the parties to be included in
 11 this volume of the Reporter's Record, in the
 12 above-styled and numbered cause, all of which occurred
 13 in open court or in chambers and were reported by me.
 14 I further certify that this Reporter's Record of the
 15 proceedings truly and correctly reflects the exhibits,
 16 if any, admitted by the respective parties.
 17 WITNESS MY OFFICIAL HAND this the 14th day of
 18 October, 2011.
 19
 20
 21 /s/ Judy Hansen
 22 
 23 Judy Hansen, Texas CSR 4979
 24 Expiration Date: 12/31/2012
 25 Official Court Reporter
 122nd District Court
 Galveston County, Texas
 Galveston, Texas 77551